

Regional Forester (Reviewing Officer)  
Pacific Northwest Regional Office  
Attn: 1570 Appeals  
P.O. Box 3623  
Portland, OR 97208-3623  
Via <objections-pnw-regional-office@fs.fed.us>

July 8, 2014

Re: 36 CFR 218 Objection of Antelope Grazing Allotments Project

Dear Regional Forester:

In accordance with 36 CFR 218, the Klamath Siskiyou Wildlands Center (KS Wild), Oregon Wild, Center for Biological Diversity, and Concerned Friends of the Winema object to draft decision described below.

**Document Title:** Draft Decision Notice- Finding of No Significant Impact, for the Fremont-Winema National Forest Antelope Grazing Allotments Project

**Effective Date:** Legal notice for “Opportunity to Object” was published June 1, 2014 in Klamath Falls Herald and News. Our objection was submitted well before the July 15, 2014 deadline for objections.

**Lead Objector:** The Klamath-Siskiyou Wildlands Center is lead objector.

**PROJECT DRAFT DECISION DESCRIPTION:**

The proposed decision combines the Antelope Grazing Allotment (Silver Lake District), 77,249 acres (49,777 acres National Forest System Lands (NFS lands)); the Antelope Cattle and Horse Allotment (Chemult District), 68,349 acres (64,948 acres NFS lands); and the North Sheep Pasture administratively moved from the Jack Creek Sheep and Goat Allotment (Chemult District), 19,063 acres (18,687 acres NFS lands) into a single allotment to be called the Antelope C&H Grazing Allotment.

<b>Actions Proposed</b>	<b>Selected Parameters</b>
Allotment Size, in eight pastures	169,559 acres
Max. AUMs Permitted	3,300
Max. Cow/Calf Pair Permitted	419 c/c pair under a Term Grazing Permit & 75 cow/calf pair under Term Private Land Permit
Number of Herds	Variable
Permitted Season of Use	May 15- September 30
Authorized Season of use	May 1 - October 15
Permitted Duration of grazing	4.5 months
Maximum Miles of Fence Construction	20
Miles of Fence Reconstruction	20.7
Minimum Miles of Fence Removal	1.4

Number of new resource protection fences	8
Number of resource protection fences to reconstruct	2
Maximum number of resource protection fences to maintain.	10
Number of spring sources needing maintenance	5
Number of new spring developments	4
Number of ponds needing reconstruction	14

Implementation of these improvements will be scheduled for completion over the next three to five years.

#### Administration of the Allotment

Permitted grazing would continue under management systems designed to be consistent with Forest Plans standards and guidelines for no more than 419 c/c pair under Term Grazing Permit and 75 c/c pair under Term Private Land Permit with grazing authorized from May 1 to October 15. Herd number and size may vary each year for ease of management and movement of cattle through the pastures, meadows, and units. Examples of early to late season use for the various pastures and their approximate timing of use each year are displayed in Tables 2 and 3 below. Actual allotment on/off dates may vary up to two weeks based upon range readiness conditions and utilization data (see description below). Pasture move dates will be determined by allowable use levels and other grazing standards being met in key areas across the allotment such as fens, meadows, and spring areas.

This alternative would provide improved dispersal of livestock and flexibility in management of grazing, when compared to the current system by;

1. providing additional grazing in the North Sheep Pasture (an unused pasture administratively moved from the Jack Creek Sheep and Goat Allotment),
2. including the private lands found along Jack Creek known as Moffit and Jamison Ranch (Upper and Lower) under a new term private land permit
3. continuing the term grazing permits in the Tobin Cabin Pasture and Stimson Meadow and,
4. allowing grazing in four meadows or riparian areas currently excluded from grazing (Round Meadow, Rider's Camp, Cannon Well, and Jack Creek).

**Project Location (Forest/District):** The Antelope Grazing Allotments Project is located in the Silver Lake and Chemult Ranger Districts of the Fremont-Winema National Forest.

**Name and Title of Responsible Official:** No official listed in draft decision but we assume the responsible official is Fremont-Winema National Forest Supervisor Constance Cummins.

**Request for Meeting to Discuss Resolution:** The Klamath Siskiyou Wildlands Center (KS Wild), Oregon Wild, Center for Biological Diversity, and Concerned Friends of the Winema request a meeting to discuss potential resolution of the issues raised in this objection.

**NARRATIVE DESCRIPTION OF THOSE ASPECTS OF THE PROPOSED DECISION  
ADDRESSED BY THE OBJECTION:**

1. We object to all authorized grazing on federal lands in the Chemult Ranger District. This includes proposed grazing in the Chemult pasture, proposed grazing in North Sheep Pasture and proposed grazing in meadows or riparian areas currently excluded from grazing (Round Meadow, Rider's Camp, Cannon Well, and Jack Creek).
2. We object to the failure of the decision to specifically provide a schedule for restoration of open water habitat for Oregon spotted frogs in proposed critical habitat along Jack Creek (minimum ten acres open water during late summer low water period).
3. We object to the failure of the decision to provide a schedule for numeric recovery goals for Oregon spotted frogs in Jack Creek (e.g. 200- 400 egg masses) and annual monitoring methods to document the recovery.
4. We object to the failure of the decision to provide a schedule for restoring habitat conditions conducive to the restoration of beaver. This means measurable increases of willow cover, measurable increases of aspen cover and distribution, and increased shrub species cover in appropriate stream reaches of Jack Creek.
5. We object to the failure of the decision to provide a schedule for restoration of beaver along Jack Creek and annual monitoring of beaver activity in Jack Creek critical Oregon spotted frog habitat.
6. We object to the failure of the decision to provide a schedule for restoration of each and every groundwater dependent ecosystems (i.e. fens) regardless of size or presumed "importance".
7. We object to the failure of the decision to provide a schedule for restoration of each and every Riparian Management Area regardless of size or presumed "importance" .

**SUGGESTED REMEDIES THAT WOULD RESOLVE THE OBJECTION:**

We suggest that grazing be restricted to the Silver Lake portion of the allotment while intensive restoration and monitoring is implemented on the Chemult District portion of the allotment. The intent of the following suggestions is to implement timely Oregon spotted frog recovery actions and establish baseline condition and trend for ground water dependent ecosystems, associated wet meadows and densities of sensitive plant species.<sup>1</sup>

1. Eliminate authorized grazing in the Chemult pasture (phase out to non-use over 2 years), eliminate proposed grazing in North Sheep Pasture, and eliminate proposed grazing in meadows or riparian areas currently excluded from grazing (Round Meadow, Rider's Camp, Cannon Well, and Jack Creek). Adopt alternative 4 with restoration emphasis. Eliminating grazing in the Chemult Pasture must be accompanied with needed restoration actions to recover Jack Creek spotted frogs to viable numbers. Due to loss of surface water habitat the Jack Creek spotted frogs cannot be expected to increase to viable numbers present when the Forest Plan was adopted.

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<sup>1</sup> See attached GIFFORD PINCHOT TASK FORCE v. PEREZ. No. 03:13-cv-00810-HZ which affirms legal basis for acquiring baseline data.

2. Identify a schedule for 2015, 2016, 2017 etc. for increasing open water habitat along Jack Creek to at least ten acres with artificial ponds and reconstruction of beaver dams as identified in Jack Creek Site Management Plan and 2009 decision document.
3. Identify a schedule for 2015, 2016, 2017 etc. for coordinated federal agency counting of egg mass on Jack Creek and all other occupied habitat on the Winema Forest (Three Mile/Fourmile complex, Buck lake, Annie Creek/Sun creek complex). These data are needed to make a Forest wide assessment of spotted frog viability and trends.
4. Identify a scheduled for 2015, 2016, 2017 for active restoration of beaver to Jack Creek with cooperation with Oregon Department of Fish and Wildlife. This means active restoration of willow, aspen and other palatable vegetation in appropriate locations, translocation of entire beaver families, protection of beaver from persecution, and annual monitoring of beaver activity.
5. Identify a schedule for 2015, 2016, 2017 etc. for inventory of all groundwater dependent ecosystems (i.e. fens) using the Forest Service 2012 protocols. Coordinate with agency and academic fen experts.
6. Identify a schedule for 2015, 2016, 2017 etc. for restoration of all groundwater dependent ecosystems (i.e. fens and fen like wet meadows) that would include measurements of several indicator parameters (e.g. water table levels, desirable vegetation cover, pine encroachment densities, sensitive species densities). Coordinate with agency and academic fen experts.

**DESCRIBE HOW THE OBJECTIONS RELATE TO PRIOR COMMENTS:** We identified detailed environmental, legal and policy conflicts with proposed grazing in the Chemult District in our January 11, 2014 letter and supporting photo documentation attachment (Photo Attach). KS Wild and 5 others sent a letter dated March 6, 2013 to Forest Managers requesting that open water habitat be artificially created along Jack Creek during summer 2013. On March 4, 2014 R. Nawa (KS Wild) contacted Fremont Winema Forest Supervisor Connie Cummins to inform her about the critical need to artificially create open water habitat for Jack Creek Oregon spotted frogs.

## **SPECIFIC ISSUES RELATED TO THE DRAFT PROPOSED ACTION:**

### **Introduction/Background**

The principal issues of objection are authorized grazing in Oregon spotted frog critical habitat, grazing in groundwater dependent ecosystems (wetland fens) and chronic trespass grazing that jeopardizes spotted frogs, streams, and fens.

The Fremont- Winema Forest issued a draft EA in August 2012 and final EA in February 2013, but that EA was withdrawn by the Forest Supervisor on April 8, 2013 after several administrative appeals were submitted to the Regional Forester. *See* Simpson Decl. ¶ 15 & Ex. 3b; Declaration of Jayne Goodwin ¶ 4, 6, 12 (filed herewith); Declaration of Richard K. Nawa ¶ 17 & Ex. 3 (filed herewith); Declaration of Lauren M. Rule Ex. 18.<sup>2</sup> Supposedly, the Forest

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<sup>2</sup> All declarations and exhibits attached to this objection are public documents submitted to the District of Oregon as part of ongoing litigation in the case of *Concerned Friends of the Winema, et al v. U.S. Forest Service*, Case No. 1:14-cv-737-CL (filed May 2, 2014), discussed below.

Service withdrew the EA because of a “procedural error” in not making the project record available to the public before the decision was signed. Rule Decl. Ex. 18. However, it took the Fremont-Winema Forest until December 2013 to issue a new draft EA and in May 2014 issued a final EA/Draft Decision, which is the subject of this objection.

### **Oregon Spotted Frog**

The expected federal listing of Oregon spotted frogs (ca August 2014) is creating a management dilemma similar to the 1980s failure of outdated Forest Plans to provide adequate habitat for the northern spotted owl. Judge Dwyer ruled that the Forest Service was illegally proceeding with timber sales in spotted owl habitat with no plan in place to assure species viability in each National Forest. Piecemeal project level protection for spotted owls was found to be inadequate for needed programmatic landscape/forest level planning and Judge Dwyer halted all logging in spotted owl habitat until a suitable Forest Plan was in place. Similarly, we contend that livestock grazing must be suspended in Oregon spotted frog habitat (e.g. Chemult District) while pro-active recovery actions are implemented to provide increased certainty about recovering the spotted frog to viable numbers as existed when the Winema Forest Plan was adopted in 1990. Recovery of Jack Creek Oregon spotted frog population to viable numbers is now dependent on active management to artificially create additional open water habitat that was gradually lost over time when beaver were trapped out of the area in the 1970s. Prohibiting cattle from accessing proposed critical spotted frog habitat is necessary but not sufficient for spotted frog recovery. Jack Creek spotted frog egg mass data has shown no appreciable increases since open water habitat decreased dramatically during a period of drought and loss of beaver ponds. Currently, habitat projects to create open water habitat for Oregon spotted frogs languish while Fremont -Winema staff is preoccupied with supporting livestock grazing as the dominate use in the Jack Creek/Walker Rim area on the Chemult Ranger District. Frog habitat restoration projects discussed by the agency since 2007 and approved in 2011 have not been completed. Rule Decl. Exs. 30-33; Nawa Decl. ¶ 41.

Newly discovered locations of Oregon spotted frogs in the North Sheep pasture occur in the part of Jack Creek that is intermittent and does not have consistent stream flow all year. Declaration of Theresa L. Simpson ¶ 87 & Ex. 20 at 8-15. During summer, much of the stream dries up and only intermittent pools retain water. *Id.* ¶ 88. Because the Oregon spotted frog is the most aquatic of all native frog species in the Pacific Northwest, it is almost always found in or near water for all of its life history stages. *Id.* ¶¶ 84-86 & Ex. 24 at 39.<sup>3</sup> Thus, in summer, Oregon spotted frogs are confined to deep pools within the intermittent stretch of Jack Creek, and are particularly sensitive to conditions that reduce the water level and degrade the few remaining pools where frogs concentrate during the dry season. *Id.* ¶¶ 87-90. Drought conditions compound impacts, when pools further shrink in size, depth, and numbers earlier in the season and for greater periods of time, decreasing habitat for frogs even more during the low water season. *Id.* ¶ 88.

### **Trespass Grazing**

Since 2010, livestock have continued to access Jack Creek as well as numerous fens,

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<sup>3</sup> Note that Ex. 24 is replaced with attached updated Markus Feb 2014 Wildlife Report

damaging habitat for OSF and sensitive plants and mollusks. Despite continued reminders in the AOIs that cattle are not authorized to graze behind the Jack Creek riparian fence and that it is the permittee's responsibility to maintain that and other fences on the allotment to prevent use of unauthorized areas, trespass cattle accessing Jack Creek were repeatedly reported to the Forest Service in 2011, 2012, and 2013. *See* Rule Decl. Ex. 16 at 1-2, 5, Ex. 17 at 1-2, 5 (2012 & 2013 AOIs); Goodwin Decl. ¶¶ 13, 17-23 & Exs. 1-3; Simpson Decl. ¶¶ 94-96, 102-03 & Ex. 20. This unauthorized use occurred behind the Jack Creek riparian fence, in the lower Jamison area, and off the allotment to the south where the new Oregon spotted frog locations were discovered in 2013 (Davis Flat and Yellowjacket areas). Goodwin Decl. ¶¶ 17-22; Simpson Decl. ¶¶ 94-96, 102-103. In fact, from July-October, 2013, the former District Wildlife Biologist made sixteen trips to monitor the new spotted frog locations – nearly one visit per week – and discovered trespass cattle near the creek on every visit. Simpson Decl. ¶ 103 & Ex. 20. Much of this trespass occurred due to inadequate or poorly maintained fences. Goodwin Decl. ¶¶ 19-21; Simpson Decl. ¶¶ 91-101 & Exs. 19, 21.

Forest Service employees have likewise noted trespass cows from the Antelope Allotment in 2010-2013 and poorly maintained fences. Rule Decl. Exs. 22-24, 28; Simpson Decl. Ex. 17 at 8-10, Ex. 18. Due to trespass cows and excessive use behind the Jack Creek riparian fence as well as unauthorized use past the permitted season, the Forest Service issued two notices of noncompliance to the permittee at the end of the 2011 grazing season. Rule Decl. Ex. 25. This unauthorized use occurred despite promises by the permittee to increase efforts to ride the allotment, check fences, and prevent trespass of cattle. Again in 2013, livestock were repeatedly found in unauthorized areas, including behind the Jack Creek riparian fence and to the south of the allotment, triggering a warning letter in August 2013 and a notice of noncompliance in November 2013 for unauthorized use throughout the grazing season. Rule Decl. Exs. 26-27.

Cattle access to Jack Creek has harmed Oregon spotted frog and proposed critical habitat. Objectors' experts observed cattle impacts along Jack Creek in 2012 and 2013, including degraded streambanks and stream channels, reduced vegetation, incised channels and headcuts that lower water tables, cattle trails in frog breeding habitat that alter water flows, and cattle waste in or near the stream that lowers water quality. Simpson Decl. ¶¶ 114-121 & Ex. 7 at 13-16, 18; Nawa Decl. ¶¶ 32-35. Impacts observed in summer 2013 were particularly threatening for Oregon spotted frogs because of low water conditions exacerbated by the drought. Simpson Decl. ¶¶ 120-124 & Exs. 20, 23. Trespass cattle south of the allotment concentrated at the same few pools in Jack Creek that Oregon spotted frogs were using. Cattle drinking the remaining water, trampling frogs, contributing excrement, and destabilizing streambanks create a high likelihood of mortality for the frogs. *Id.* The Forest wildlife biologist also expressed concern about the Oregon spotted frogs discovered in 2013 in lower Jack Creek due to the threats posed by trespass cattle. Rule Decl. Ex. 28.

### **Fens and fen-like wetlands**

Objectors' experts have observed a variety of impacts from cattle to many fens on and adjacent to the Chemult Pasture, degrading the function of the fens and habitat for the sensitive plants found there. Simpson Decl. ¶¶ 33-53 & Ex. 5; Nawa Decl. ¶¶ 28-31. Many of the four-dozen fens and springs visited by Objectors' experts are unprotected from livestock and are used by

cattle as water sources, and adverse impacts to soils, vegetation, and hydrology were occurring at all unprotected fens, impairing their ability to support sensitive plant species. Simpson Decl. ¶¶ 43-51, 64-65 & Ex. 5. The impacts from cattle are distinguishable from those of elk, and the extent and magnitude of cattle impacts at these fens is much greater than elk impacts. *Id.* ¶¶ 52-53 & Ex. 9 at 13 (Botany Report).

The Forest Service's own assessments conducted in 2010-2011 likewise found that many of the fens observed were not in good condition. Based on soil disturbance—which included bare soil, compaction, pedestals, or channel erosion—the Forest Service found that 14 of 39 sites had more than 10% soil disturbance and thus were rated as fair or poor condition rather than good condition. *Id.* Ex. 9 at 14, 107-110. Of the fens visited, 59% had pedestaling, 25% had more than 10% bare ground, 19% had soil compaction, and 9% had channel erosion. *Id.* Ex. 10 at 10-11 (Hydrology Report). The Hydrology Report also noted that, of the eight fens in poor condition, all but one were outside of ungrazed fenced areas while ten of eleven fens inside fenced enclosures were in good condition. *Id.* at 12. Moreover, the Soils Report noted that seven sites were not meeting soils objectives; and that areas seeing minimal soil damage were less accessible to cattle, with substantial soil recovery occurring inside enclosures, while detrimental soil conditions occurred in unprotected fens. *Id.* Simpson Ex. 11 at 20-21.

Dr. Rick Dewey (Forest Service botanist) has expressed concerns about grazing the fens on the Antelope Allotment. In his comments on the 2012 draft EA, he noted that the fen complex on the Chemult Pasture “is a one-of-a-kind biophysical resource, not only on the [Fremont-Winema], but almost certainly at the [Region 6] scale as well.” Rule Decl Ex. 34. It is unique because of the high density of fens within the complex, the collective area over which the groundwater discharges occur, and the large number of sensitive botanical species sites within this complex. *Id.* He stated that this area “warrants special administrative status at both the Forest and Regional levels.” *Id.* Dr. Dewey further stated that, “I can only recommend, with the greatest sense of urgency, that the [Fremont-Winema] embrace the concept that livestock grazing may simply be an indefensible management activity within these [groundwater ecosystems],” and recommended permanently removing, entirely or to a very substantive degree, livestock and grazing from within the area of these groundwater-fed ecosystems. *Id.*

- 1. Fremont-Winema National Forest Supervisor Constance Cummins draft decision erred by identifying intensive livestock grazing in the Chemult District. The objections raised below have been previously made in KSWild comment on December 2013 EA with reference to Alternatives 3 and 5, and with nearly identical wording in some cases.**
  - a. The draft decision is biased towards exploitation and not responsive to public comment and scientists' statements for increased conservation.** We disagree with draft decision statements that the draft decision is responsive to public comment. Several conservation groups (e.g. Klamath Siskiyou Wildlands Center, Center for Biological Diversity, Concerned Friends of the Winema, Klamath Direct, Western Watersheds, and Oregon Wild) and several local individuals have submitted numerous comment letters about the

Jack Creek area since 2008 in support of habitat improvement and fen protection, while opposing any increases of grazing area in the Chemult District. Experienced scientists (Terry Simpson, Dr. Michael Cummings, Richard Nawa, and Dr. James Litts) have made sworn statements about the need for scientific study, protection of unique ecosystems from harmful disturbance, habitat restoration, and reduced grazing exploitation in the Walker Rim area that includes Jack Creek (declarations attached). Morgan Lindsay (KS Wild) submitted letters from 749 individuals supporting Alternative 4 with no cattle grazing in the Chemult District. A review of the “reading room” for this project finds that only one individual and the permittee submitted comments supporting the draft decision.

Despite repeated and determined public opposition to grazing exploitation, the decision overwhelmingly supports the wishes of the permittee for grazing substantially more sensitive riparian areas (e.g., North Sheep Pasture, Round Meadow) under the guise of “flexibility” while dismissing the public’s wishes for a more conservation oriented decision with a reduction in areas impacted by livestock to provide certainty for improved conditions for spotted frogs, fens and streams (e.g. non-use in Chemult Pasture, maintain existing exclosures). Every aspect of the decision and process (scoping, purpose and need, issue development, Jack Creek Site Management Plan, alternative development, EA, draft decision) were unreasonably narrow and biased towards the profit driven desires of the permittee and misconstrued as responding to “public comment”. Even from an economic perspective the draft decision is not responsive to the public because of several hundreds of thousands of dollars needed for new fences and fence maintenance in a fence hostile, forested allotment. Such a biased and narrowly defined project can only be satisfied by continued authorization of grazing on the Chemult Pasture – apparently regardless of the cost to public economic and natural resources.

**b. Oregon spotted frog and beaver. We object to the draft decision for authorizing any grazing along Jack Creek. The Chemult Pasture and North Sheep pasture are currently not suitable for anticipated cattle grazing because Jack Creek is in need of extensive habitat restoration to restore population viability to Oregon spotted frogs and restore beaver.**

The Winema Forest Plan (4-6) provides clear instructions for providing habitat for sensitive species such as the spotted frog that has been proposed for federal listing and ecologically important wildlife such as beaver:

- “5. Maintain or enhance the Characteristics of riparian areas, wildlife habitat, and fish habitat near or within riparian ecosystems.
- 6. Manage habitat for the perpetuation and/or recovery of plants and animals listed as threatened, endangered, or sensitive.
- 7. Provide habitat for viable populations of all existing native and desired non-native vertebrate species.”

The Winema Forest Plan (4-67) requires allotment management planning to include requirements for threatened species such as the Oregon spotted frog and resolve livestock /wildlife conflicts with species such as beaver:



“Forest Plan S&G 9-20 for Allotment Management Planning: Coordination requirements with other resource operations shall include: (1) threatened, endangered, and Sensitive plant and animal species; (2) riparian area conflicts; (3) livestock and wildlife conflicts; (4) the reduction in the spread of noxious weeds where present;

The Winema Forest Plan Standard and Guideline 4.7 on page 4-47 states, “*Habitat use of the Winema National Forest by these [sensitive] species shall be evaluated. Habitat requirements sufficient to maintain the species shall be provided.*” Similarly on page 109 of the Fremont Forest Plan, “*Habitat for sensitive plants and animals shall be managed or protected to ensure that the species do not become threatened or endangered because of Forest Service actions....maintain or increase the status of populations and habitats.*” Forests are required to review programs and activities through a biological evaluation, to determine their potential effect on sensitive species.

In 1990, when the Winema Forest Plan was adopted, Jack Creek had much more open water than in 2014 because abandoned beaver dams still retained surface water through the summer. Abundant Oregon spotted frog numbers through the 1990s had less conflict with livestock than today because of availability of larger open water habitats. Beaver trapping and deterioration of beaver dams has caused open water habitat for Oregon spotted frogs to decline to below 3 acres in 2014. The severe decline of Oregon spotted frogs since the late 1990s is paralleled with the severe decline in open water habitat. Low amounts of open water habitat means low numbers of frogs.

The proposed listing for Oregon spotted frogs states that the “minimum amount of habitat thought to be required to maintain an Oregon spotted frog population is about 10 ac (4 ha) (Hayes 1994, Part II pp. 5 and 7). Smaller sites generally have a small number of frogs and, as described above, are more vulnerable to extirpation.” 78 Fed. Reg. 53611. R. Nawa calculated expected open water habitat for spotted frogs on Jack Creek during normal late season low water conditions (see Nawa Decl #42) He assumed possible frog distribution along 4-8 miles of Jack Creek based on the Site Management Plan and recent observations of Oregon spotted frogs in the North Sheep Pasture of the Jack Creek S&G Allotment. He used 4 ft. average wetted width of the stream from the August 2003 stream survey. He calculated that Jack Creek spotted frogs have access to only about 2-4 acres of fragmented open water habitat during late summer. This is less than half the amount needed for a viable population. In a drought year similar to 2013, the available open water habitat could be as low as 1-2 acres, creating an even more precarious situation for the frogs.

We assert that prior to authorizing grazing anywhere along Jack Creek, the Fremont Winema Forest must first restore a minimum of ten acres of open water habitat for Oregon spotted frogs, document a sustained recovery to viable population numbers in the hundreds that existed in the late 1990s, provide habitat for and reintroduce beaver colonies along Jack Creek. A 2011 project decision is in place and funding is available for restoration of open water habitat. Biologists have shown unanimous support for artificial development of open

water habitat for Jack Creek spotted frogs.<sup>4</sup> In March 2013 we sent a letter of support for projects to increase open water habitat, but the Fremont-Winema Forest has consistently failed every year to implement projects to increase open water habitat.

The draft decision is in error because it fails to identify Round Meadow (marsh) for spotted frog introduction. The draft decision would disrupt Round Meadow restoration by introducing cattle into an area that currently benefits from grazing exclusion. Colonization of Round Meadow marsh with Oregon spotted frogs (not cattle) would greatly help meet Forest Plan requirements to help provide adequate habitat for sensitive or federally listed threatened species (i.e. Oregon spotted frog).

The draft decision is in error because it fails to identify needed beaver introduction to Jack Creek and continuation of grazing exclusion to improve likelihood of successful beaver introduction. Beaver are critical for long-term recovery of Oregon spotted frogs in Jack Creek. An attempt to colonize Jack Creek with beaver releases in 2012 failed as the released beaver have apparently left Jack Creek.

The draft decision and the Monitoring Plan violate the Forest Plan because the decision failed to coordinate with wildlife agencies and Forest Service staff wildlife biologists to identify the location and amount of open water habitat needed by Oregon spotted frogs to maintain viability (with 10 acres of season long wetland being the minimum needed). The Monitoring Plan (App G-6) identifies “open water” habitat for spotted frogs but provides for no monitoring of its precise location, desired acreage extent or a schedule as to when open water habitat would be created or enhanced (e.g. artificial creation of open water habitat, restoration of beaver, spotted frog introductions to Round Meadow marsh).

The adaptive management strategy would document undesirable effects after they occur. This is not acceptable with Jack Creek Oregon spotted frogs that are on the brink of extirpation. Infrequent but damaging grazing disturbance or direct adverse impacts cannot be reversed and are rarely documented with infrequent monitoring. The impact of a cow that becomes mired and dies in a spotted frog use area cannot be reversed. Urination in small isolated pools with spotted frogs cannot be mitigated with adaptive management. Monitoring, as we have seen during summer 2013, cannot prevent biological impacts to frogs that jeopardize their existence (KS Wild EA Cmt. Photos 3,4).

We believe it's instructive to compare the Fremont Winema Forest management with adjacent Deschutes National Forest. The Deschutes National Forest has eliminated grazing conflicts with Oregon spotted frogs and has collaborated with other agencies to increase open water habitat. These laudable conservation actions have resulted in viable populations of Oregon spotted frogs on the Deschutes National Forest. During the same time period the Fremont Winema National Forest has fenced out portions of Jack Creek from authorized grazing and engaged in lodge pole pine removal along Jack Creek but has failed to increase the needed amount of open water habitat that can sustain a viable population. Chronic

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<sup>4</sup> See attached letter dated 28 February 2011 from Marc P. Hayes PhD (Washington Department of Fish and Wildlife) and attached letter dated 18 March 2013 from Jay Bowerman (Sunriver Nature Center)

trespass grazing hinders spotted frog recovery. The Jack Creek population decline is not an anomaly, all other spotted frog populations on the Fremont Winema Forest have been extirpated, have declined precipitously, or have unknown abundance.

The draft decision and monitoring plan fails to provide for increased willow shrub cover and increased aspen tree cover along Jack Creek as identified in S&G 9-23.

The Winema National Forest Plan Standard and Guideline 9-23 for **Allotment Management Planning** (p. 4-67) states:

“Allotment management plans for range shall include a strategy for managing riparian areas for a mix of resource uses. A measurable desired future riparian condition shall be established based on existing and potential vegetative conditions. When the current riparian condition is less than that desired, objectives shall include a schedule for improvement. The allotment management plans shall identify management actions needed to meet riparian objectives within the specified time frame. Measurable objectives shall be set for key parameters, such as shaded stream surface, stream bank stability, and shrub cover. This process is described in 'Managing Riparian Ecosystems (zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington' (1979). The plan shall address the monitoring needed to determine if the desired rate of improvement is occurring. Allotment management plans currently not consistent with this direction will be developed or revised on a priority basis under a schedule established by the Forest Supervisor”

The draft decision, EA, and monitoring plan failed to conduct Riparian Habitat Analysis as described in “Managing Riparian Ecosystems (zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington' (1979).” Baseline conditions have not been documented for environmental analysis as required by law.<sup>5</sup> Managing Riparian Ecosystems (p.6-9) describes specific field procedures for riparian habitat analysis that includes measuring present, potential and recommended tree (e.g. aspen) and shrub (e.g. willow) cover for fish and wildlife. Management for beaver and many other species would mean analyzing willow and aspen cover in riparian areas along Jack Creek to ensure optimum habitat for wildlife. Managing Riparian Ecosystems (p. 6) states that riparian zones should be managed for at least 80% of potential shrub and tree cover. The draft decision/monitoring plan fails to identify recommended site potential percent cover of aspen, site potential percent cover of willow, and the desired year of attainment (see Managing Riparian Ecosystems p. 8). This is important because beaver cannot be expected to restore Oregon spotted frog open water habitat if beaver habitat is far below site potential. R. Nawa has visited Jack Creek several times and found that the willow and aspen cover is far below potential due to cumulative impacts of livestock grazing (Photos 1-4; Nawa Decl. # 25-37; Bestcha et al. 2014).

Coordination between range and wildlife is lacking in the draft decision to ensure beaver activity is monitored and wildlife conflicts with livestock are eliminated. The draft decision has no beaver reintroduction, beaver population monitoring, or beaver habitat monitoring. Beaver are important because their dams aggrade incised channels on Jack Creek and provide open water habitat for spotted frogs. Beaver and cattle are in conflict for habitat

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<sup>5</sup> See GIFFORD PINCHOT TASK FORCE v. PEREZ. No. 03:13-cv-00810-HZ

because cattle consume willow/aspen reproduction and other small shrubs. The loss of beaver due to trapping in the 1970s was partly due to unresolved conflicts between beaver and livestock management for increased grass forage. Beaver were released into Jack Creek in 2012 to implement the Spotted Frog Site Management Plan but none have been detected along the stream in 2014. The draft grazing decision fails to actively coordinate with Forest Service wildlife biologists and other wildlife agencies to develop explicit and required monitoring of beaver activity along Jack Creek and resolve ongoing wildlife habitat conflicts with livestock. The required coordination with wildlife biologists to avoid livestock/beaver conflicts with allotment management planning has not been fulfilled as required in S&G 9-20. The draft decision for riparian grazing that allows cattle to consume up to 40% of the willow/aspen (EA2-22) is not appropriate along Jack Creek where beaver are desired and aspen/willow cover is far below potential (Photos 1a,1b, 2,3,4). Recent research findings (best available science) indicate the demise of aspen along streams such as Jack Creek is due to persistent livestock grazing (Bestcha et al. 2014). Coordination with wildlife agencies could also provide that beaver trapping be explicitly prohibited on public lands along Jack Creek and potential beaver trappers informed.

- c. Miller Lake Lamprey and dace. The draft decision and monitoring plan fails to provide scientific monitoring of Miller lake lamprey abundance/distribution, abundance/distribution of its prey species (dace), delineate critical reaches along Jack Creek for its life history needs (e.g. best spawning habitat, best rearing habitat), or provide specific conservation measures to resolve conflicts with livestock grazing.**

Similar to the Oregon spotted frog, the Fremont Winema Forest has not complied with Forest Plan direction for Miller Lake lamprey (sensitive) with respect to goals (Winema Forest Plan 4-6), Allotment Planning S&G 9-20 and S&G 9-23. Response to comments p. 2 describe Level II stream surveys from 2003 that only provide anecdotal observation of Miller lake lamprey. Similarly, a 2010 ODFW survey merely corroborated the continued presence of Miller lake lamprey and no physical documentation of 2010 ODFW survey has been provided into the administrative record. Simply verifying the presence of Miller lake lamprey with piecemeal anecdotal observations (e.g. culvert replacement, spotted frog investigations, water quality monitoring (response to cmts p.3) fails to meet Forest Plan direction and is not adequate for AMP S&Gs 9-20 and 9-23. We assert that prior to any authorized grazing along Jack Creek that there be Level II and possibly Level III surveys designed to document the baseline densities of Miller Lake lamprey (fish/km) and its prey species the dace as well as baseline riparian, streambed, and streambank conditions. Studies are also needed to identify specific lamprey spawning areas and characteristics of high density ammocoete rearing substrates.

Baseline streambank stability for Jack Creek has not been assessed with respect to streambank angle and erosion (Photo 4). The Fremont Winema failed to conduct field techniques for assessing streambank stability on Jack Creek as explicitly described “Managing Riparian Ecosystems-Appendix B” (S&G23). The draft decision lacks recommendations by fish biologist to correct failing streambanks with data collected and consistent with S&G 9-23 and Managing Riparian Ecosystems (p. 4-8, Appendix B). The

EA fails to provide baseline data about Lower Bank Angle. INFISH Resource Management Objective requires that more than 75% of banks with less than 90 degree angle (EA:3-165). Down-cutting and incision on Jack Creek has likely exceeded this standard since there are extensive areas with vertical cut stream banks but the draft decision lacks recommendations and schedule to improve vertical cut streambanks.

We disagree with the speculative assertion in response to comments p. 5 that states “The section of Jack Creek drainage through North Sheep pasture goes dry, having flows only during snow melt. This is an area that is not appropriate for a level II stream survey.” On May 17, 2014 R. Nawa observed hundreds of dace in Jack Creek in the North Sheep Pasture in the same areas found to support Oregon spotted frogs due to perennial flow from springs. Dace are fish and the extent of their habitat needs to be surveyed even if it is outside the range of the Miller Lake lamprey. Similarly, this portion of Jack Creek needs to be surveyed for baseline streambank stability as it has not recovered from past grazing and ongoing trespass grazing (Photo 4). A recommendation for stabilizing the channel in North Sheep Pasture with log weirs is needed because previously placed logs are deteriorating and losing effectiveness at stabilizing the channel from down cutting.

In conclusion, we wish to reiterate that there be no grazing along Jack Creek in any pastures until required baseline surveys have been made, deteriorating habitat is restored to optimum wildlife standards, and viable populations of sensitive species are demonstrated with population density estimates. The mere casual observations of lamprey and dace I jack Creek (presence/absence) does not constitute monitoring and does not constitute science based fisheries management consistent with direction in the Forest Plan.

- d. **The draft decision is pre-mature because it does not have conservation measures from ongoing consultation with the US Fish and Wildlife Service due to expected listing of Oregon spotted frogs in August 2014 (DDN:14).** Conservation measures from the consultation have not been incorporated into the draft decision. Our science based objections to the draft decision are incomplete because the findings of the consultation process have not been made public.
- e. **The Fremont-Winema Forest has failed to demonstrate that viable populations of Oregon spotted frogs are distributed across the Winema Forest, as required under the Forest Plan.** Despite the command of the Forest Plan to provide for viable populations of all existing native and desired non-native plant and animal species across the Forest, grazing continues on Forest Service lands (e.g. chronic trespass grazing on Jack Creek) as spotted frogs plummet to extinction on those same federal lands. The mere existence of other Oregon spotted frog populations (besides the Jack Creek population) does not mean that these other populations constitute viability for the species on the Winema National Forest and does not satisfy direction in the Forest Plan to maintain populations throughout their existing range on the Forest. The analysis in the Federal Register for the proposed listing of the Oregon spotted frog indicates that the Oregon spotted frog lacks viability across Winema National Forest.

Data for Jack Creek indicate severe declines (78FR53600): “Livestock grazing is cited as a specific concern for Oregon spotted frogs at Jack Creek, Fremont-Winema National Forest, Chemult Ranger District, in Oregon (USDA 2004, pp. 56–57). Since 1999, the population has reduced from 670 breeding adults (335 egg masses) to 34 breeding adults (17 egg masses) in 2011.” The proposed listing further states that “trend data are lacking for three out of four populations in the Upper Klamath Lake” (78FR53591). The locations lacking trend data include Winema National Forest occupied spotted frog habitat on Sevenmile Creek and Fourmile Creek. The 78FR5392 states that “The minimum population estimate for [upper Klamath] is currently estimated to be 112 breeding individuals suggesting drastic population declines since 1998.” Where data exists, Oregon spotted frogs have declined drastically in the Winema National Forest. No data has been reported from the Fremont-Winema N.F. that suggest Oregon spotted frog viability for any population. All Oregon spotted frog data from Fremont-Winema Forest are inconclusive or show drastic declines and lack of viability. In addition, the Forest has not explained how its proposed action provides for a viable Jack Creek population itself, especially in light of the small and isolated nature of the population, chronic cattle trespass into spotted frog habitat and resulting adverse impacts to frog individuals and habitat, and inherent conflicts between spotted frogs and cattle during low water conditions.

- f. **We object to the use of the Oregon Spotted Frog Site Management Plan (dated November 28, 2011) as a basis for the draft grazing decision.** New information in the proposed listing of Oregon spotted frogs and new field observations about short period (trespass) grazing during 2013 indicate that this grazing strategy is not appropriate as a conservation measure for Jack Creek Oregon spotted frogs (actually it never was appropriate). Grazing suggested in the SMP would cause considerable harm and likely contribute to the extirpation of the Jack Creek spotted frog population. The Fremont-Winema National Forest has failed to reconcile new scientific analysis from US Fish and Wildlife Service with the conclusions in the SMP and thus has failed to take a hard look at the best available science, acknowledge significant controversy among scientists including the expert wildlife agency US Fish and Wildlife Service, and ensure the scientific integrity of its analysis. Additionally, by relying on the fault ridden SMP as the basis for its decision, the Forest Service has arbitrarily narrowed the scope of the proposed action and the range of alternatives considered. Appendix B in the SMP (POTENTIAL ACTIONS FOR GRAZING MANAGEMENT) must be removed and proposed short duration grazing in Oregon spotted frog critical habitat abandoned.

We also object to the Fremont-Winema Forest failure to request US Fish and Wildlife Service assistance with development of the SMP. At the 11<sup>th</sup> hour of decision making in 2014 the Fremont-Winema Forest has now begun consultation when most grazing conflicts could have been worked out years ago. The US Fish and Wildlife Service expressed interest in this project as early as 2008 but were not involved with development

of alternatives (see letter dated November 7, 2012 from L. Sada (USDI Fish and Wildlife Service) to G. Westlund (Fremont Winema N.F)).

Under the draft decision, grazing management would incorporate the “the potential actions for grazing management” in the Jack Creek Oregon Spotted Frog Site Management Plan (Gervais 2011) on both NFS and private lands. The draft decision is based on an inaccurate SMP. The scientific basis for recommended grazing in the SMP has been disproven with new information in the proposed listing for Oregon spotted frogs. Contrary to what is asserted in the SMP and EA, the draft decision would have no benefits to Oregon spotted frogs and would be certain to cause habitat degradation and direct mortality.

Site Management Plan p.1 states that “SMPs should be updated as new scientific information becomes available, and this plan may be changed or modified based on new information in the future.” Significant new scientific information is now available from 1) the proposed listing of Oregon spotted frogs (USFWS 2013a ; 2) proposed critical habitat (USFWS 2013b and USFWS 2014); 3) new sighting of Oregon spotted frogs several miles below distribution recognized in SMP; and 4) documentation of significant impacts to Oregon spotted frogs with short duration (albeit trespass) grazing during summer 2013. The defective Site Management Plan must be updated to include new information that indicates there is no benefit to Oregon spotted frogs from short duration grazing on Jack Creek.

Livestock use of dwindling open water areas on Jack Creek causes serious conflicts, habitat degradation, and even direct mortality to Oregon spotted frogs (KS Wild EA Photos 3,4). The SMP p/34 states that “[g]razing is a historical use of this site, and may benefit *R. pretiosa* by helping to maintain the early seral stages in the vegetative structure and by removing biomass from oviposition sites (White 2002).” The Proposed Listing for Oregon Spotted frogs (78FR53597) states “Studies conducted in Washington (White 2002, pp. 45–46; Pearl and Hayes 2004, pp. 22–23) demonstrated that the quality of breeding habitats for Oregon spotted frogs is improved by reducing the height of the previous years’ emergent vegetation (i.e., reed canarygrass in these cases).” Further discussion of this issue in the Proposed Listing indicates that benefits from grazing are limited to sites where reed canary grass has become dominant in breeding areas. Reed canarygrass does not occur in Jack Creek at oviposition sites, thus, the findings of White 2002 do not apply to Jack Creek and are taken out of context in the SMP.

The SMP p. 35 states that “[o]nce habitat conditions have been restored particularly in Lower Jack and Upper Jamison Meadow, limited grazing may be reintroduced in these meadows, but as part of a carefully designed and controlled experiment to determine optimum duration and intensity that would remove biomass without damaging the creek banks or other sensitive areas”. The SMP is wrong. There is no documented need or scientific basis to “remove biomass” with cattle grazing on Jack Creek. The Proposed Listing for Oregon Spotted frogs (78FR53600) states:

“Cattle grazing ceased at Trout Lake NAP in Washington after a monitoring study showed no apparent positive effect on the Oregon spotted

frog population trends (Wilderman and Hallock 2004, p. 10), indicating that either grazing was not an effective tool for reed canarygrass management at this location, or that perhaps reed canarygrass was not as threatening to breeding frogs at this location as previously thought. This may be because winter snow pack compresses the reed canarygrass, leaving none of the previous season's vertical stems available to Oregon spotted frogs during the breeding season. The observed negative consequences of grazing, while perhaps acceptable if there was clear benefit to the Oregon spotted frog populations, were not compatible with other site management goals and posed a limitation to future restoration on the site (Wilderman and Hallock 2004, p.14)."

Cattle grazing to remove biomass at Jack Creek is unwarranted because as stated above winter snow pack compresses the grass biomass at Jack Creek making removal by livestock unnecessary. The SMP p. 34 states that "[c]areful, targeted monitoring would allow the evaluation of the relationships between cattle grazing and *R. pretiosa* demographics and habitat." Observations during summer 2013 of trespass grazing (trespass grazing mimics short duration grazing) found serious impacts to Oregon spotted frogs as cattle degraded small open water areas where Oregon spotted frogs were concentrated. Water quality and critical spotted frog habitat was degraded. There was at least one direct mortality due to cattle trampling ( KS Wild EA Photos 3,4). Due to the precarious status of Jack Creek Oregon spotted frogs it would be unethical, unscientific and likely illegal to repeat "adaptive management" grazing along Jack Creek where Oregon spotted frogs eke out a tenuous survival during late summer drought periods. The unacceptable consequences of short duration grazing have been adequately documented in 2013. The draft decision to graze in Oregon spotted frog habitat must be abandoned. There is no point in implementing short duration grazing in critical Oregon spotted frog habitat as grazing will simply kill more frogs with no benefits. There is no field data from Jack Creek to support the repeated EA/SMP assertion that grazing improves oviposition sites. Field observations indicate that desiccation of egg masses from rapidly receding water levels due to drought is the major limiting factor with respect to oviposition.

The US Fish and Wildlife Service have the authority to enter into agreements with private land owners to recover threatened species and do not have a mandate to promote livestock grazing. The Fremont-Winema Forest needs to revise the Jack Creek Site Management Plan to place needed emphasis on implementing critical habitat projects. Grazing schemes in spotted frog habitat that ultimately hinder recovery must be eliminated.

The Fremont Winema National Forest arbitrarily created a foregone conclusion to reject alternatives with reduced cattle numbers or reduced distribution by first establishing the desired AMP private term grazing scheme into the Jack Creek Site Management Plan. The SMP grazing proposal had the effect of truncating decision choices between alternative 3 and alternative 5, since these are the only alternatives that "comply" with the Site Management Plan. The Jack Creek Site Management Plan failed to identify actual adverse trade-offs being made (e.g. delays in needed pond habitat projects on public lands, retaining or increasing large herd size, increased duration of grazing, trespass grazing). The grazing



schemes developed in the Site Management Plan would benefit the permittee at the expense of the Oregon spotted frog and needed open water habitat restoration identified by US Fish and Wildlife Service.

The US Fish and Wildlife Service comment on the August 2012 EA supports our objections to Alternatives 3 and 5 developed from the SMP. They commented that:

“It is not clear which alternative is most beneficial to the conservation of Oregon spotted frogs and appears that parts of all 5 alternatives could be the decision. Would like to see actions that improve and retain the breeding; rearing; overwintering and dispersal functions of occupied and potential habitat for the frog in the Jack Creek watershed. Would like to see the creation and retention of open water habitat for frog breeding and rearing habitat; retention of early seral vegetation to provide full solar exposure; and protection of springs and fens associated with Jack Creek to provide adequate water quality.”

The Site Management Plan was reviewed by Terry Simpson (November 2011) and found to have many factual errors as well as disputed scientific opinion (i.e. scientific controversy). The EA failed to identify differing expert opinion about facts and assertions in the Jack Creek Oregon Spotted Frog Site Management Plan that were carried forward to support controversial reintroduction of grazing into Oregon spotted frog exclosures. The Site Management Plan erroneously leads the public and decision maker into believing that alternative 3 and 5 were the best choices for Oregon spotted frogs when there is considerable scientific controversy about authorizing livestock grazing along Jack Creek.

The draft decision is not supported by the best available scientific information compiled by the US Fish and Wildlife Service in the August 2013 proposed Oregon spotted frog listing. The draft proposed grazing scheme for Jack Creek continues to rely on a purely speculative “APPENDIX B: POTENTIAL ACTIONS FOR GRAZING MANAGEMENT” in the Jack Creek site management plan (Gervais 2011) that misapplies studies from streams in Washington (White 2002) to Jack Creek. There is no data from Jack Creek to suggest that benefits from grazing would outweigh adverse impacts due to competition for water during late summer. The entire Federal Register paragraph discussing grazing impacts and Shovlain’s study (78Fed.Reg. 53599) is reproduced here:

*Fourteen of twenty-eight (50 percent) sites surveyed in British Columbia, Washington, and Oregon were directly or indirectly influenced (negatively and positively) by livestock grazing (Hayes 1997, p. 44; Hayes et al. 1997, p. 6; Pearl 1999, p. 16). Severe habitat modification has been caused by cattle at several Oregon spotted frog localities in Oregon. Large numbers of cattle at a site negatively affect habitat for Oregon spotted frogs, particularly at springs used by frogs as overwintering sites (Hayes 1997, p. 44). The most recent work monitoring the effects of livestock grazing on Oregon spotted frogs involved grazed and ungrazed treatments at Jack Creek on the Fremont Winema National Forests in Oregon (Shovlain 2005 entire). Shovlain’s*

(2005, p. 11) work suggested that livestock grazing displaced Oregon spotted frogs to ungrazed exclosures as grazing pressure outside the exclosures increased. Livestock trampling and consumption likely affects the microhabitat preferred by Oregon spotted frogs by reducing emergent and riparian vegetation, which could explain Shovlain's findings. However, the frogs in Shovlain's study did not show a preference for exclosures or controls under lower grazing pressure. Therefore, a moderate degree of grazing does not appear to affect frog behavior, suggesting an intermediate level of disturbance may be conducive to Oregon spotted frog habitat use (Hayes et al. 1997, p. 6, Hayes 1998b, pp. 8–9, McAllister and Leonard 1997, p. 25, Watson et al. 2003, p. 299)."

While the findings of Shovlain's study are open to interpretation the actual "Livestock Grazing Conclusion" in the 78 Federal Register 53600 states the following:

*"Livestock Grazing Conclusion—Where livestock grazing coincides with Oregon spotted frog habitat, impacts to the species include trampling of frogs and changes in habitat quality due to increased sedimentation, increased water temperatures, water management techniques, and reduced water quality. The effects of livestock grazing vary with site conditions, livestock numbers, and timing and intensity of grazing. In Washington, all of the known occupied areas have been grazed in the recent past, but where grazing has been removed, heavy infestations by invasive reed canarygrass have reduced or eliminated habitat for Oregon spotted frogs unless other management techniques were applied. In controlled circumstances, moderate grazing can be beneficial if it is the only practical method for controlling invasive, nonnative vegetation and sustaining early seral stage vegetation needed for egg laying. Grazing is ongoing in 10 of the occupied sub-basins and is considered to be a threat to Oregon spotted frogs at these locations." (emphasis added)*

Again we wish to reiterate that there is no heavy infestation of reed canarygrass or any other undesirable vegetative condition that warrants grazing in Oregon spotted frog proposed critical habitat in Jack Creek. Desiccation is the principal threat to oviposition on Jack Creek. There is no scientific documentation of excessive native vegetation hindering frog oviposition on Jack Creek.

- g. The draft decision cannot be implemented effectively and with desired results because of chronic trespass grazing that adversely affects Oregon spotted frogs (i.e. significant direct, indirect, and cumulative impacts).**

The Forest Supervisor draft decision fails to consider the direct and indirect effects of repeated trespass (due to poor fence conditions and poor range management) into Jack Creek Oregon spotted frog habitat, and the cumulative effects of chronic trespass into

these areas since before 2008. Despite the construction of the Jack Creek riparian fence ca 2008 (aka frog fence), cattle continued to access OSF habitat on the allotment by breaching fences, as acknowledged in numerous reports of trespass cattle from 2008-2010. Rule Decl. Ex. 4. The Forest Service notified the permittee of the need to maintain these fences but the trespass continued. Rule Decl. Ex. 5.

Numerous incidents of trespass grazing in 2011 and 2013 resulted in the permittee being issued a “non compliance notice”. Assumptions that new proposed fences will eliminate chronic trespass grazing and the resultant adverse impacts to spotted frog habitat are speculative and do not address all faulty fences. Fences assumed to be protecting critical spotted frog habitat have become porous and ineffective for preventing access cattle access to critical spotted frog habitat (e.g. North Sheep Pasture, Lower Jameson).

- h. **No turnout date is acceptable for any portion of Jack Creek because of high risk for Oregon spotted frog trampling mortalities (KS Wild EA Cmt. Photo 4).** The Forest Service has not demonstrated that there is a surplus of Oregon spotted frogs that can be put at risk to facilitate livestock grazing anywhere on Jack Creek.
- i. **We object to the use of a single criteria (percent bare ground) as the sole deciding factor about the condition and trend of riparian areas and fens as they relate to annual operating and ten year AMP decisions concerning livestock grazing distribution (Appendix G and Botany Report).**

Although bare ground is a useful degradation threshold , the presence/absence of bare soil alone is not a scientifically valid parameter to gauge acceptable cattle grazing impacts in riparian management areas and sensitive fens (Photo Attach. Photos 5,6). The Forest Service’s reliance on this single criterion ignores important components of the ecosystem as well as direct, indirect, and cumulative effects of grazing on the allotment . Other factors besides bare ground need to be considered that would require annual adjustments or AMP cattle exclusion.

Peat Formation. The “bare ground” damage threshold was intended for mineral soils not peat. Peat formation needs to be monitored in some fens and made a criteria for livestock management.

Cattle Safety. Cattle have a propensity to become mired in the larger high value fens such as the one on upper Jack Creek. Livestock would logically need to be excluded from porous fens that can kill cattle and contaminate the aquifer.

Spotted Frogs. Cattle would need to be excluded from known or potential spotted frog habitat on all areas of Jack Creek including the North Sheep pasture because of potential for trampling and local degradation of small pools (Photo Attachment Photos 3,4).

Recreation. Some easily accessible fens would be prime areas for public education trails and platforms. Cattle would logically need to be excluded to avoid adverse interactions with the public. Fens are worst possible place to promote multiple use with livestock.

Scientific Research. Some high value fens in the allotment need to have the fen and local hydrological source area excluded from grazing to provide monitoring of peat formation, nitrogen and other groundwater chemicals that could be altered by grazing (Cummings Declaration and Exhibits 2,3). Groundwater dependent ecosystems with numerous sensitive plants need baseline conditions free of livestock to assess trend.

**j. We object to the Forest Service misuse of adaptive management to justify expanding grazing impacts into areas currently being excluded from grazing. Ongoing riparian recovery and wildlife habitat will be jeopardized.**

No natural resource parameter (e.g., water quality, wildlife habitat, fisheries habitat, rare plant densities) will be improved by reintroduction of grazing in areas recovering from grazing damage. The Implementation and Effectiveness Monitoring fails to identify existing baseline monitoring condition and desired monitoring condition for each grazing unit/pasture as required for Adaptive Management. Scales for assessing vegetation and soil damage compared to existing baselines are not standardized to an ecologically appropriate scale. Is the Forest Standard measured at 10% damage for each acre, 10% damage for each 10 acres, or 10% damage for each 100 acres? Riparian Management activity areas must be delineated at appropriate scales for monitoring and management.

Merely monitoring to one Forest Plan standard is not Adaptive Management. It appears the draft decision is inappropriately authorizing former “trespass grazing” in enclosures and non-use pastures by simply designating the previous trespass as “Adaptive Management”. Chronic trespass along Jack Creek and lack of effective fencing are not being addressed with Adaptive Management (Photo Attachment Photos 2,3,4). We are object to Adaptive Management that is being misused to allow cattle to be “legally” about anywhere at any time in the allotment. Adaptive management is being used to circumvent Forest Plan standards because existing Forest Plan standards cannot met with proposed grazing in riparian management areas (i.e. maintain or improve standard).

The draft decision is disingenuous because it authorizes grazing in North Sheep Pasture where the permittee has been unable to control livestock use. Rather than holding the permittee accountable for keeping cattle out of the North Sheep pasture to ensure full recovery and protection of spotted frogs, the draft decision will remedy the chronic trespass grazing by authorizing it. This is unethical and certainly violates the intent of AMP planning S&Gs. Since chronic trespass grazing in the North Sheep pasture appears to have prevented full recovery of

damaged streams areas (Photo 4) and likely adversely affected newly detected spotted frogs, it can be assumed these adverse impacts will continue with authorized use. The North Sheep pasture is still recovering from previous grazing that exceeded Forest Plan Standards for land allocation Riparian Management 8. Expensive channel erosion control structures placed in Jack Creek will be put at risk for damage with renewed grazing in the North Sheep pasture. Draft decision grazing will be concentrated in land allocation Riparian Management 8 and will certainly retard further recovery and contribute towards a downward trend.

- k. **The Forest Service's discussion and use of range readiness criteria for grazing the Chemult and North Sheep pastures is unsupported and violates provisions of the Forest Plan that require the agency to maintain, protect, and improve long term soil productivity and wetland and riparian habitat and hydrologic values.**

Despite deficiencies about range readiness in the Winema Forest plan, The Forest Service Handbook (92.23b - Adaptive Management ) states:

“ When livestock grazing is proposed using an adaptive management strategy, the proposed action shall set defined limits using adaptive management principles of what is allowed, such as timing, intensity, frequency, and duration of livestock grazing. These limits set standards that can be checked through monitoring to determine if actions prescribed were followed, and if changes are needed in management.

Examples of administrative decisions include:

- a. Determination of specific dates for grazing,
- b. Specific livestock numbers,
- c. Class of animal,
- d. Grazing systems, and
- e. **Range readiness when these variables fit within the NEPA-based decision.”** (emphasis added)

The EA pages 2-3,4 describes Forage Conditions & Use, Range Readiness, Soil Readiness, and Vegetative Readiness. The discussion implies the unstated, but false assumption, that all “pastures” become “range ready” at some predictable point in the grazing season. The subjective and qualitative description for range readiness parameters provide for no measurable standard or methods to identify wetland fens, Riparian Management 8 areas, or “pastures” that are unsuitable for cattle grazing due to yearlong surface moisture and therefore, in most years never become “range ready” (e.g., most fens, Round Marsh (meadow), Jack Creek shallow isolated pools with Oregon spotted frogs). The false assumption that fens become range ready has resulted in the Monitoring Plan using “bare ground” (ostensibly created from cattle trampling damage) as the criteria for determining when cattle must move from the fen. A competent federal resource professional would surely object to any livestock use in sensitive peat areas with

numerous rare and sensitive plant species (Rule Declaration Exhibit 34). Nevertheless, the resource professionals on the Fremont-Winema have “agreed” that 10% soil/veg destruction is acceptable to facilitate livestock exploitation of fens (See response to comments).

The EA, Implementation Monitoring in Appendix G-8 and Botany report suggests that annual grazing that causes “bare ground” will be used to determine allowable maximum use rather than forage utilization because the bare ground 10% standard is generally exceeded before the 50% vegetation utilization standard. Annual and predictable soil damage strongly suggests that these fens are being grazed prior to soil range readiness and this results in damage not allowed with Forest Plan standard to “maintain or improve” riparian areas. Annual grazing that measurably and significantly degrades soils annually and cumulatively is downward trend and violates Forest Plan standards. For example, Appendix G-8 Monitoring and Adaptive Management states for the Chemult Pasture: “If 5 or more fens distributed throughout the pasture exceed the [10% bare ground] standard, livestock will be removed from the pasture for the remainder of the grazing season.” This monitoring standard is an obvious admission that Forest Plan standards cannot be met with grazing in fens with fragile peat dominated soils. We contend that many if not most fens never become “soil range ready” otherwise there would be little to no development of bare ground from cattle trampling/foraging as would be expected in meadows with firm mineral soils. Fragile peat soils in fens are unsuitable for draft decision grazing. Everybody except the Fremont-Winema staff seem to understand that saturate peat soils are unsuitable for livestock exploitation.

The Winema Forest Plan (4-141,142) lacks standards for range readiness on Riparian Management Area 8C and merely states “[l]ivestock will be controlled to maintain or improve vegetative condition of moist and wet meadows.” The EA states that “[r]ange readiness criteria are established and observed for each particular location and management situation.” This misleading statement has no applied factual basis. No criteria or standards for range readiness have been established for each of the 35 fens (Management Area 8C) identified in the Botany Biological Evaluation (p.99-103) and none have been established for Riparian Areas (Management Areas 8A) adjacent Jack Creek stream reaches. The range readiness criteria appear to be inappropriately applied at the “pasture scale”. To achieve Forest Plan objectives, range readiness must be applied to each specific Riparian Management Area such as each fen, each wet meadow, and each stream reach (i.e. ecologically relevant scales to protect plant and animal species).

Bias in favor of proposed “lightly stocked” grazing is apparent with qualitative and subjective descriptions for soil readiness. The EA2-4 states that “[s]oils should be fairly dry and firm. Wet meadows, unless lightly stocked, should be dry enough to carry stock without breaking the sod and adversely impacting the cover.” The EA inappropriately provides a soil readiness exception to allow

livestock turnout into wet meadows and fragile fens if “lightly stocked” and also apparently to then graze until 10% of the vegetation is trampled to bare ground (i.e mud holes).

The fact that fens can swallow up and kill an errant cow ought to be cause not to allow even light stocking in fens. The range readiness criteria fail to consider the real possibility of cattle becoming mired in the fen and dying. Due to the unpredictable nature of waterlogged peat, cattle deaths are always a possibility where fens have substantial wet patches. Carcasses would cause substantial pollution. Portions of fens never become “dry enough to carry stock without breaking the sod and adversely impacting the cover.” EA2-4. Fens are not predictably “soil range ready” and therefore are not suitable for annual intensive grazing.

Forest Service response to KSWild comment about range readiness states “[a]gree that cattle grazing could impact fens; our analysis discloses the degree of likely impacts and concludes they are within Forest Plan standards and guidelines.” This misleading statement is not supported with facts and is false. The Botany Biological Evaluation (Table A-3) identifies 13 fens (Management Area 8C) that are not meeting Forest Plan standards (Forest Plan p. 137) because undesirable soil disturbance caused by livestock grazing exceeds 10%. These fair to poor condition fens all have surfaces that are damp to wet or mostly wet. The subjective range readiness guidelines in the EA will result in continued detrimental soil conditions (compaction, displacement, puddling, pedestalling, post holing, trailing) identified as not acceptable in Forest Plan (p. 4-137). Range readiness determinations by Forest Service range staff failed to prevent degradation or restore these damaged fens over the past 20 years of grazing, including the 2013 season. Thus, there is no scientific factual basis for soil, range, wildlife or botany predicting improved conditions of riparian management areas in the Chemult Pasture with draft decision.

A Forest Service response to KSWild comment about range readiness states “Monitoring and adaptive management would be used to protect high priority fens; as needed.” This misleading statement is not supported with facts and is false. Previous monitoring and adaptive management over the past 20 years has failed to protect fens from degradation. Only livestock exclusion has been proven effective. The Botany Report Table A-3 reports that all 8 fens that have been excluded from grazing are in good condition and all 5 fens in the ungrazed North Sheep pasture are in good condition. No amount of “adaptive management” can change the sensitive physical nature of wet meadows, streams, and fens within the proposed pastures/units. Past monitoring and documented soil damage strongly suggests that “no grazing” with alternative 2 riparian exclosures or Alternative 4 is needed to provide certainty for attaining desired ecological conditions in a reasonable amount of time (probably much less than ten years) and compliance with direction in the Forest Plan.

Alternatives 2,3,5 and draft decision provide for a never ending cycle of degradation and sporadic superficial recovery.

- 1. We object to proposed new interior fencing of reduced enclosure size to increase grazing area because saturated/unstable soils prevent stable fencing to control livestock and, even if successful, such proposals would only protect small portions of the available wetland/riparian habitat on the allotment, in violation of the Forest Plan.**

Forest Service response about range readiness states that “*protection fences would be constructed to protect fens inside the Squirrel Camp; Dry Meadow; and Round Meadow exclosures.*” New fencing configurations to exclude from grazing only small portions of Management Area 8 Riparian Areas (e.g. fens) as identified in draft decision and proposed with the Alternatives 3 and 5 often meets with failure because the fencing structures sink into marshy peat soils. . The Forest Service’s draft decision fails to recognize and take into account the reality that fen and wetland soils do not necessarily support effective fence structures.

The extreme moisture conditions in unique ground water fens and adjacent wet meadows require livestock exclusion over broad areas as provided in Forest Plan 4-137: “*Under extreme conditions, the area may need permanent protection or removal of grazing for long periods (Clay and Webster 1989).*” Also the Forest Plan provides that management for riparian areas include some upland areas for wildlife. The Forest Plan does not provide for protection of the de minimus amount of riparian habitat as identified with draft decision and proposed with alternative 3 and 5.

- 2. National Environmental Policy Act. The draft decision is based on a defective, outdated, unsupported, and incomplete environmental analysis under that fails to take a hard look at Alternatives 3 and 5. Substantial questions exist as to whether alts 3 and 5 will have significant impacts, requiring the preparation of an EIS. The objections raised below have been previously identified in KSWild comment on December 2013 EA with nearly identical wording in some cases, thus they qualify for objections.**
  - a. We object to the draft decision and the Jack Creek Spotted Frog Site Management Plan because they failed to consider accomplishing resource objectives by reducing cattle numbers, reducing area grazed, and reducing grazing duration rather than increasing the area grazed and increasing grazing duration. We object to the failure of the EA to adequately disclose the impact or reason for increasing cattle numbers from alternative 2 (419cow/calf) to Alternative 5 (494cow/calf) and increasing the duration of grazing by 2 weeks into mid-October.**



Allotment Management Planning (Forest Plan 4-67)

“S&G 9-19 Livestock stocking levels shall be determined by range analysis considerations, including: (1) forage condition, suitability, and availability; (2) other resource needs as shown in 9-7 above; (3) permittee's ability to self-monitor management and maintenance in project allotment plans; and (4) economic factors, including development and maintenance of facilities.”

Having unreasonably narrowed its project scope to only include current or increased numbers of livestock grazing, the Forest Service failed to analyze grazing systems with reduced numbers to achieve flexibility (S&G 9-19 below) as an alternative to increasing the area grazed in alternatives 3 and 5. Trade-offs between reduced impacts with reduced numbers of cattle compared to increasing the area impacted with the same numbers of cattle were not evaluated in the EA. Assertions in the EA that reduced cattle numbers is somehow analyzed with the no grazing alternative are wrong due to extreme differences of grazing intensity. It would seem prudent to reduce livestock numbers/aums because of reduced forage due to chronic drought, conifer encroachment, and large areas of Riparian Management Area 8 in poor or fair condition and not meeting Forest Standards. In addition the permittee cannot control the large herd. Trespass grazing is chronic and damaging.

- b. The May 2014 EA fails to acknowledge that the Oregon spotted frog was proposed for federal listing and fails to include “best available scientific” information from the U.S. Fish and Wildlife Service’s proposed listing regarding the frog’s status, habitat requirements, and the impacts of grazing on such parameters.**

Furthermore, the EA does not reference the federal register notice for listing (78FR53582-53623). Analysis in the EA about Oregon spotted frogs was not updated to include the most recent expert opinion of Fish and Wildlife Service. The Forest Service’s failure to include such information constitutes blatant disregard of high quality scientific data from the expert wildlife agency and results in an inaccurate, scientifically unsupportable decision.

- c. We object to the EA because it failed to map and list acreages of Proposed Critical Habitat for the Oregon spotted frog that would or would not be grazed in various alternatives and the Forest Service has not updated its analysis based on the newly proposed designation of critical habitat in June 2014<sup>6</sup>**

The EA fails to identify the number and location of acres of proposed critical Oregon spotted frog habitat that would be grazed in each alternative. The EA:64 states “[f]or the purposes of this analysis, potential [spotted frog] habitat includes only those lands that currently are capable of supporting OSFs based on ground knowledge and professional judgment (Table 3.7).” This subjective method for identifying spotted frog habitat must be replaced with actual proposed critical habitat designations published in the Federal Register. Prior to final decision the EA must be updated to include analysis of all proposed critical habitat identified by the Fish and Wildlife Service for Jack Creek, including the proposed

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<sup>6</sup> Information about critical habitat is readily available from USFWS  
<https://www.federalregister.gov/articles/2014/06/18/2014-14184/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-the-oregon-spotted>

revision of critical habitat released on June 18, 2014. Any areas of known habitat but not identified as proposed critical would also need to be analyzed. For example, Tables 3-7, 3-11 and 3-12 would need to identify proposed critical habitat that would be grazed in each alternative. Similarly the draft decision needs to include acres of critical habitat that would be grazed and a thorough explanation for why Oregon spotted frogs are being put at risk of extirpation with federal grazing.

- d. We object to Round Meadow not being identified in the EA as potential Oregon spotted frog habitat and managed for Oregon spotted frog introduction (Photo Attachment Photos 5, 6). The EA fails to identify trade-offs between managing Round Meadow marsh for frog introduction and managing it for livestock forage. Wildlife and Range have failed to coordinate in the development of the AMP to provide at least 10 acres of open water habitat for Oregon spotted frogs (see S&G 9-20).**

1. Round Meadow is currently fenced and excluded from livestock grazing within the Chemult pasture of the Antelope Allotment. Oregon spotted frog introduction would provide a high need and priority for full wetland restoration.
2. There are no predatory fish or bullfrogs in Round Meadow. Similar habitats (Big Marsh) have abundant and viable Oregon spotted frog populations. Minor amounts of Reed canary grass can be controlled without the use of livestock.
3. Round Meadow is “representative” of the historical geographical and ecological distributions of OSF.
4. Round Meadow would contribute needed resiliency because of its large size and stability.
5. Round Meadow would contribute needed redundancy for the Jack Creek Oregon spotted frog population that is at precariously low abundance. The EA:3-64 states that maintaining [spotted frog] habitat would also allow for reintroduction if the [Jack Creek] population becomes extinct in the near term. An introduced spotted frog population at Round Meadow marsh would provide a source population if the Jack Creek population is extirpated.
6. Round Meadow is suitable for introduction and would provide Oregon spotted frog viability in the future should stochastic events extirpate the nearby extant Jack Creek population.

- e. We object to the EA because it fails to disclose that Jack Creek spotted frogs are at high risk for extirpation during the next ten years regardless of alternative chosen.**

The EA:3-63 states that maintaining [spotted frog] habitat would also allow for reintroduction if the population becomes extinct in the near term. Speculation about reintroduction gives the reader and decision maker the false impression that extirpation of Jack Creek spotted frogs is easily reversed. The loss of this unique high elevation population would be an irretrievable loss and constitutes a significant but undisclosed impact. The EA:3-108 erroneously states that “this project will not contribute to a negative trend in viability on the Freemont-Winema National Forest for OSF”. The cumulative effect of this proposed grazing when combined with livestock grazing over space and time from the last

20 years would contribute to the potential loss of this distinct population of spotted frogs. The loss of any frog population would certainly contribute to a negative trend as discussed in the proposed spotted frog listing.

**f. We object to the EA's arbitrary and unsupported statement that proposed actions (and inactions) will not contribute to the need for Oregon spotted frog listing or cause a loss of viability.**

The Winema Forest Plan requires that the Forest Service manage fish and wildlife habitat to maintain viable populations of all existing native and desired non-native plant and animal species, and that distribution of habitat shall provide for species viability and maintenance of populations throughout their existing range on the Forest. The EA:3-108 states that "this project will not contribute to a negative trend in viability on the Fremont-Winema National Forest for OSF." The EA failed to support this statement with scientific analysis of viability, including the status of the Jack Creek and other spotted frog populations on the Forest, historic range of habitat variability, distribution, carrying capacity, and/or habitat or population objectives for viability. Also, new information in the proposed spotted frog listing identifies livestock grazing as contributing to spotted frog declines on the Fremont-Winema Forest.

The EA:3-108 states that Alternatives 3 and 5 "may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause loss of viability to the population or species." This statement is directly contradicted by August 2013 proposed listing of Oregon spotted frogs that specifically identified grazing along Jack Creek as a contributor to the need for federal listing:

"Six sites in the Klamath Basin are associated with grazing: Jack Creek, Buck Lake, Parsnip Lakes, and on private lands on the Wood River, Williamson River, and adjacent to Klamath Marsh NWR. These sites are potentially vulnerable to both the direct impacts of grazing sedimentation, trampling, as well as the indirect effect of egg mass desiccation resulting from water management techniques that drain water early in frog breeding season to stimulate grass production. Livestock grazing is cited as a specific concern for Oregon spotted frogs at Jack Creek, Fremont-Winema National Forest, Chemult Ranger District, in Oregon (USDA 2004, pp. 56–57). Since 1999, the population has reduced from 670 breeding adults (335 egg masses) to 34 breeding adults (17 egg masses) in 2011."

78FR53600

Clearly the federal grazing program as implemented with the Winema Forest Plan over the past 22 years has significantly contributed to the decline of the Jack Creek spotted frog population and has also contributed to the need for August 2013 proposed federal listing. The proposed listing also demonstrates the need to conserve all spotted frogs. The Forest Service has not demonstrated that there are surplus Jack Creek spotted frogs that can be sacrificed to accommodate livestock grazing. Extirpation of the Jack Creek spotted frog population is likely during the next ten years with continued grazing and no increases of open water habitat to a minimum of ten acres (inactions).

**g. We object to the cursory, speculative and inaccurate description of the direct, indirect, and cumulative impacts of trespass grazing in the EA.**

Trespass grazing has been field documented to have chronic and serious impacts to Jack Creek Oregon spotted frogs and their habitat. With respect to livestock grazing and direct trampling the EA:72 states that “Currently there is no [permitted]grazing within 181 acres OSF habitat, with the exception of possible trespass of cattle.” The EA states on p. 81 for alternative 2: “It is expected that some cattle may periodically get through the fence into these areas. If this occurs, the permittee would be alerted immediately to remove cattle from the area. Although the potential is slim, this could result in trampling of frogs. Due to the short duration of grazing from potential trespass, potential impacts such as a potential decline in water quality, reduction in vegetation that provides cover and prey habitat, establishment of cattle trails that may divert water, loss of water from livestock drinking, and a reduction in residual vegetation in breeding habitat are expected to have negligible impacts to OSF habitat (Table 3.15).”

These Pollyannaish statements about trespass grazing are speculative and misleading. The EA is clearly wrong for assuming that every trespass grazing incident would be detected and corrected prior to grazing damage and trampling of Oregon spotted frogs. The EA statements about trespass grazing are falsified by actual observational information from summer 2013 about actual grazing impacts to Oregon spotted frogs and impacts to spotted frog habitat from trespass livestock grazing that were documented to appropriate Forest Service staff ( KS Wild EA Cmt. Photos 2,3,4). The EA failed to acknowledge the significance of this new factual information or include it in the EA with accurate statements. Although trespass grazing was reported on at least 6 different days, the EA contains no information that Forest Service staff investigated these incidents or documented impacts caused by the trespass grazing. Thus, the repeated statements in the EA about trespass grazing having “negligible” impacts is specious because Forest Service staff did not investigate the actual incidents of trespass grazing or if they did investigate the Forest Service failed to document the observed trespass impacts in the EA. The EA ignored 6 incidents of trespass grazing on Jack Creek, ignored documented habitat damage, and ignored a frog mortality. There are simply too few Jack Creek frogs to assert that even the avoidable loss of one frog is “negligible”. During summer/fall 2013 Terry Simpson and Jayne Goodwin reported at least 6 incidents of unauthorized cattle grazing on the Fremont-Winema National Forest that were in direct conflict with habitat needs of Oregon spotted frogs. This frequency of trespass grazing is not “new” as trespass grazing has been a chronic impediment to spotted frog recovery for at least 5 years. Excerpts of their emails are documented in our January 2014 comment letter and Goodwin Declaration Exhibits 1,2, and 3.

**h. The EA and BE contain unsupported assertions that are contradicted by expert scientific opinion about the purported “potential benefits” of grazing to Oregon spotted frogs.**

New information in the proposed listing of Oregon spotted frogs contradicts these biased assertions of benefits to Jack Creek spotted frogs from federal grazing. New field

information about adverse effects of short duration (trespass) grazing during 2013 indicate that grazing is clearly not appropriate as a conservation measure for Jack Creek Oregon spotted frogs. Grazing has no documented benefits for Jack Creek and adverse impacts are well documented. The EA:81 falsely states that “[g]razing on Jack Creek may benefit OSF by helping to maintain the early seral stages in the vegetative structure and by removing biomass from oviposition sites (White 2002). With no grazing within 167 acres of OSF habitat, there would be no potential benefit by the removal of biomass from oviposition sites.” This assertion is contradicted by the Proposed Listing for Oregon Spotted frogs (78FR53597) which states “Studies conducted in Washington (White 2002, pp. 45–46; Pearl and Hayes 2004, pp. 22–23) demonstrated that the quality of breeding habitats for Oregon spotted frogs is improved by reducing the height of the previous years’ emergent vegetation (i.e., reed canarygrass in these cases).” Further discussion of grazing in the Proposed Listing indicates that benefits from grazing are limited to sites where reed canarygrass has become dominant in breeding areas. Reed canarygrass does not occur at Jack Creek oviposition sites, thus, the findings of White 2002 do not apply and are taken out of context in the EA/BE/SMP. Furthermore, it is now believed that winter snowpack provides compression of grasses and grazing is unnecessary where snowpack occurs. There is no documented need to “remove biomass” with cattle grazing on Jack Creek. The Proposed Listing for Oregon Spotted frogs (78FR53600) states: “Cattle grazing ceased at Trout Lake NAP in Washington after a monitoring study showed no apparent positive effect on the Oregon spotted frog population trends (Wilderman and Hallock 2004, p. 10), indicating that either grazing was not an effective tool for reed canarygrass management at this location, or that perhaps reed canarygrass was not as threatening to breeding frogs at this location as previously thought. This may be because winter snow pack compresses the reed canarygrass, leaving none of the previous season’s vertical stems available to Oregon spotted frogs during the breeding season. The observed negative consequences of grazing, while perhaps acceptable if there was clear benefit to the Oregon spotted frog populations, were not compatible with other site management goals and posed a limitation to future restoration on the site (Wilderman and Hallock 2004, p.14). Alleged benefits from cattle grazing to remove biomass at Jack Creek are unwarranted and undesirable because (as stated above) winter snow pack compresses the grass biomass making grass removal by livestock unnecessary at high elevation sites such as Jack Creek.

**i. Methods identified for determining range readiness and ecologic riparian monitoring lack adequate scientific description. Best science means the technique is described as a method and can be repeated.**

NEPA requires that methodology be included in the EA for field techniques such as determining “range readiness”. The Council on Environmental Quality (CEQ) has promulgated regulations to implement NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1. The information presented in an EIS (or EA) must be of high quality. 40 C.F.R. § 1500.1(b). “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” “Agencies shall insure the professional integrity, including scientific integrity, of the decisions and analysis in environmental impact statements.” 40 C.F.R. § 1502.24. “They shall identify any

methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.”

The EA fails to provide a scientific methodology for determining range readiness for “each particular location and management situation.” Currently the range readiness descriptions in the EA provide for subjective determinations with no technical or quantitative method that can be independently verified. Similarly, methodology ensuring scientifically valid assessments is not apparent with Adaptive Management monitoring. The EA fails to include descriptions of methods identified in Monitoring Plan & Desired Future Condition. For example, effectiveness monitoring for riparian ecologic condition and trend lists “rooted frequency”, “Greenline MIM”, “PFC”, “photo points”, “BMP”, however, there is no description of what these are or how they are measured.

We wish to emphasize that S&G 23 specifically identifies field inventory and management techniques for AMP planning with the publication: “Managing Riparian (Zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington.” The methods for collecting and managing riparian vegetation for wildlife are fully described in this government publication, but neither the EA nor draft decision identify these approved Forest Plan methods for assessing riparian wildlife habitat and stream bank stability.

**j. The EA fails to adequately disclose direct, indirect, and cumulative grazing impacts to unique riparian areas and wetlands that results in poor and fair condition that do not meet Forest Plan Standards. Only 4% of the Riparian Management areas have been surveyed and even fewer will be monitored.**

The EA:3-148 identified 8,070 acres of riparian and wetland in the Allotment and identified 4,643 acres that would be grazed with alternative 3 (EA 3-153 Table 3.29), however, the EA failed to systematically assess baseline condition and trend on these riparian acres with various alternatives (as required by NEPA). Botanical surveys found a high amount of variability of unique riparian fen condition due to size, location in the Chemult pasture, and grazing exclusion. Thirty- nine fens were surveyed (Botanical Report Table A-3) and 25 were in good condition (<10% soil damage); 8 in fair condition (10-20% damaged) and 6 in poor condition (>20% soil damage). This survey covered 328 riparian acres of the 8,070 riparian present in the allotment. Only 4% of the riparian and wetlands in the Allotment have been surveyed for condition and none for trend. Nevertheless, the botanical fen survey suggests that 1/3 of the Riparian Management areas surveyed are in poor condition with 10% or greater soil damage from grazing. The Monitoring Plan would study trend at only 12 Riparian sites when a hundred or more sites are likely being damaged by grazing.

A good condition rating means there can be up to 10% soil damage and meets the Forest Plan standard for bare ground. This allowable “Forest Plan” soil/veg degradation in Riparian Management 8 areas is significant. Heavily grazed wetlands that do not exceed this forest standard and are classed as “good” condition would still have undesirable pedestalling, compaction and erosion ( Photo Attachment Photos 5,6). For example, 9 acres

of bare ground from trampling on a 100 acre riparian area may meet one Forest Standard but the cumulative impact must be disclosed as an impact in the EA (i.e. 10% bare ground/mud is significant compared to 0% ). The cumulative damage to riparian management areas from grazing is not disclosed (e.g., quantitative estimates of bare ground, gullying, lowered water tables etc.).

**k. We object to the EA because it fails to adequately disclose that cattle will become mired and die in fens which can contribute substantially to pollution of the aquifer.**

Cattle loss is an irreversible and potentially significant impact that cannot be mitigated with adaptive management. The EA:3-65 states “[t]here have been a couple incidents of cattle getting stuck and dying in this area [upper Jack OSF habitat].” Besides the pollution effect, the economic loss of whole cow may not justify the pounds gained from cattle foraging in fens. Due to this unique risk of mortality to cattle becoming mired in fens, many fens are never “range ready” and it is not responsible grazing management to allow this risk to routinely occur.

A December 28, 2009 memo states the following: “Dead cattle mired in the spring/fen complex in the Jack Creek headwaters continue to be serious concern T26S R9E section 35 SW 1/4. This spring frog egg mass survey crew members Roush and McDermott found the rotting remains of an adult cow in the same hole as the previous years calf. This season second hole opened about 10 feet away and claimed another adult cow (Simpson September 2009). These bog holes are over 6 feet deep with subsurface connections that could be claiming many more animals. The spring/fen complex is known to have sensitive mollusk and ground water dependent plant species and is also believed to be the overwinter habitat associated with the Moffit spotted frog breeding cluster. Spotted frogs require clean well-oxygenated water especially during winter months when they are most limited in habitat. Dead cattle in the water degrade water quality and may have negative effect on any frogs/mollusks in the area.” See Rule Decl. Ex. 5 p. 7.

**l. The EA fails to disclose that cumulative impacts from a century of livestock grazing are not easily reversible with mere exclusion of livestock or modest changes in grazing systems. Restoration will require costly intervention.**

Repairing Jack Creek area headcuts will require expensive engineering. Livestock trails causing gully erosion will need filling. Restoration of beaver will require active restoration of willow and aspen. Ponds will need to be constructed to augment habitat for spotted frogs. (See 2009 Jack Creek Restoration Scoping notice and 2011 Scoping notice, attached). The decision fails to consider the costs of restoration needed due to historic, ongoing and anticipated future cattle grazing in the Chemult District. The economic analysis simply externalizes and ignores these costs.

**m. The EA assertions that ecologic conditions will improve with reintroduction of grazing into exclosures and pastures (not currently grazed) are not scientifically credible and not demonstrated on Chemult District.**

The draft decision and proposed alternatives 3 and 5 will allow grazing to damage up to 10% bare ground in sensitive riparian areas and contrary to Forest Plan S&G 23. Adaptive management appears to only address impacts in excess of this standard, but long term ecological damage is likely to have occurred long before the 10% Forest Standard is exceeded. Grass may grow back in trampled areas but that does not mean that gullies from trailing or streambank trampling has not contributed to further reduced wetland function (Photo 4 and Photo Attachment Photos 3, 6-12). The EA failed to disclose that resumed grazing in areas currently excluded from grazing is certain to have adverse impacts that will be allowed to accumulate until exclusion is once again necessary. The EA fails to acknowledge that adaptive management strategy to allow grazing until the impacts exceed a soil standard is not a credible restoration technique. Ecological impacts in riparian areas are not easily reversed with short periods of rest as with deferred grazing. Gullies, headcutting, stream channel widening, aggradation, loss of surface flow and lowered water tables are long term and possibly irreversible impacts.

**n. The EA fails to adequately disclose that cattle will be allowed into wet meadows and fens where streambanks will be trampled and pedestalling increased. We object to the EA relying on an outdated and likely inaccurate 2003 stream survey to justify grazing along the stream in 2015. Baseline conditions have not been measured according to protocols in INFISH and S&G 23.**

The Fremont Winema Forest knew that the Jack Creek Level II stream survey would be ten years old when the AMP decision was made. It's now 2014 and management decisions continue to be based on the outdated, inadequate, and likely inaccurate 2003 stream survey. The riparian habitat surveys and stream and stability surveys identified in S&G 9-23- "Managing Riparian Ecosystems (Zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington" have not been completed for Jack Creek or any other Riparian Management Area. EA impact analysis and resulting grazing management is not being informed about required baseline inventory information that would show deteriorated conditions on Jack Creek from past grazing (Photo Attachment Photos 3,6-12) and the need to identify vegetative goals for woody riparian vegetation. For example, the draft decision is not supported with required streambank and riparian habitat inventory data from Jack Creek in the North Sheep pasture.

The Forest Service is disingenuous to propose private term agreements on private lands and then claim they cannot complete stream survey data because owner's permission is required. If we presume permission cannot be obtained for stream surveys, the predicted improved conditions on private lands cannot be verified. Private land stream reaches are likely to have degraded conditions that are contrary to what is reported in the 2003 survey and also contribute to overall degraded conditions of Jack Creek. Known poor stream conditions on private lands are not disclosed even though federal term agreements are anticipated for these stream areas.



Implications that Jack Creek is in “good” condition is based on a single parameter (streambank stability) from a ten year old survey is likely misleading and inaccurate. Streams are dynamic and the preparation of the AMP that includes private lands should have triggered a complete stream survey of Jack Creek to provide up to date and relevant baseline technical information to guide decisions about suitability for grazing and habitat conditions for sensitive species (Miller Lake lamprey and Oregon spotted frog) and desired species such as beaver and birds. Jack Creek channel incision, related down-cutting, and failed attempts to repair headcutting are not accurately evaluated in the EA.

During summer 2013 and 2014 we have observed channel incision of up to 6ft. Vertical streambanks may be a “natural” condition for some portions of Jack Creek but this does not mean that the fine textured material in the streambanks is not vulnerable to damage by livestock. This vulnerability to damage is not adequately disclosed in the EA and led to false expectations about high future streambank stability with proposed reintroduction of grazing.

The Forest Service states “The exclosures have been in place 5 to 10 years and should have healed.” The Forest Service admits that exclusion is needed to heal streams in 5 years but cannot provide a similar prediction for streams with proposed deferred and high intensity grazing.

The Forest Service states that “[g]rass is an important stabilizer in meadow systems.” Fine textured streambanks on Jack Creek are extremely vulnerable to trampling damage by livestock when only grass provides protection. This is demonstrated by the 2009 scoping proposal to reconstruct portions of Jack Creek to provide open water frog habitat where the channel has widened and lost surface flow (attached) and see Photo 4.

The Forest Service states that “the 2003 stream survey has dominant stream bank vegetation as grass and sedge; no mention of willows in report.” Once again the stream survey is outdated with misleading information. The 2003 survey and subsequent EA failed to report existing and desired percent willow cover along Jack Creek as required in S&G 23. Abundant willow and aspen are vital for successful introduction of beaver. Existing willow may need to be supplemented with willow plantings. Anticipated willow plantings vulnerable to livestock grazing would logically need to be managed with livestock exclusion as suggested in Jack Creek Site Management Plan.

- o. The EA fails to demonstrate that INFISH Riparian Management Objectives for Jack Creek are being met, especially on private lands proposed for grazing or in North Sheep Pasture. Impact assessment for Miller Lake Lamprey and its prey species the dace is speculative and not based on any data other than anecdotal observation of the mere presence of the fish species.**

As previously stated, the 2003 stream survey is outdated and an inadequate baseline to for impact assessment or monitoring for Miller Lake Lamprey. The EA fails to identify any recent biological (population), distribution, or habitat surveys on Jack Creek since the 2005 Conservation Plan for Miller Lake Lamprey was approved by ODFW. Similarly the EA fails

to identify any recent biological (population), distribution or habitat surveys on Jack Creek for Miller Lake lamprey prey species, the speckled dace. The EA fails to provide data about Lower Bank Angle. INFISH Resource Management Objective requires that more than 75% of banks with less than 90 degree angle (EA:3-165). Down-cutting and incision on Jack Creek has likely exceeded this standard since there are many extensive areas with vertical cut stream banks. The EA:3-165 states:

“The pumice substrate appears to scour easily due to the presence of deeper pools and isolated pools separated by shallow or dry sections of stream channel. Pool habitats are present in Jack Creek; however, INFISH pool frequency criteria may not be appropriate in such a small, low gradient headwater stream as Jack Creek.”

Since INFISH pool frequency criteria may not be appropriate for the intermittent nature of Jack Creek it would seem prudent to identify what surface water criteria is needed for Jack Creek. None was identified for monitoring. The Monitoring Plan has no items identified in Jack Creek for monitoring by a fish biologist. The required Forest Plan AMP resource coordination with fisheries is not being implemented with input from fisheries biologist about Miller Lake lamprey.

Lacking any real data, the EA3-171 speculates about Miller Lake lamprey in Jack Creek in the North Sheep Pasture:

The addition of the North Sheep Pasture increases the length of Jack Creek that is grazed, as Jack Creek flows through the North Sheep Pasture. However, Jack Creek has intermittent flows in this portion of the project area and would only provide seasonal habitat for Miller Lake lamprey. Any ammocoetes that move downstream into this area during high flows, must either move upstream into the perennial sections as flows recede or will be stranded and perish. The effects of adding the North Sheep pasture to the allotment would therefore be minimal.

The assertion that impacts to Miller Lake lamprey would be “minimal” is not based on any documented habitat inventory, documented observations, or documented biological survey data. The EA fails to demonstrate compliance with INFISH Riparian Management Objectives for Jack Creek in the North Sheep Pasture. The EA fails to disclose damage to Jack Creek from chronic trespass grazing (Photos 3,4).

**p. The May 2014 EA provides no data about Forest Service interdisciplinary monitoring of Jack Creek or Oregon spotted frog monitoring subsequent to the 2013 grazing season.**

The conspicuous lack of any 2013 monitoring data in the May 2014 EA, demonstrates that the Fremont-Winema forest lacks the resources and commitment to carry out the meager monitoring identified in Appendix G for draft decision, alternatives 2, 3, and 5.

The Monitoring Plan G-8 says there will be an interdisciplinary field visit to Jack Creek to determine if undesired impacts are occurring. Undesirable impacts did occur (KS Wild EA Cmt. Photos 3,4,5) but the EA failed to indicate that there was any interdisciplinary post

grazing assessment of impacts to Jack Creek in 2013. This is important because based on citizen field observations in 2013, the draft decision can be expected to violate Forest Plan standards every year while the Fremont-Winema Forest can ignore citizen monitoring with impunity.

- q. We object to the Fremont-Winema National Forest requiring citizens to submit a Freedom of Information Act request to obtain a paper copy of the EA and its appendices during the 30 day comment period and then rejecting the FOIA request.**

Under CEQ regulations implementing the National Environmental Policy Act, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

The Forest Service keeps issuing slightly modified EA’s for this project with no availability of paper copies for individuals. This repeated practice effectively precluded us from reviewing color maps during the comment period and precluded many citizens from obtaining access to paper copy of the EA. We think paper copies of voluminous EAs, reports, and colored maps ought to be made available through the mail to anyone wanting one for review.

- r. Neither the FONSI nor the EA disclose irretrievable commitment of resources or irreversible impacts (40CFR1502.16).**

Neither the FONSI nor the EA disclose irretrievable commitment of resources, including unique and scientifically significant resources, or irreversible impacts (40 C.F.R. § 1502.16). Some peat soils that require thousands of years to develop will be lost or irretrievably degraded. Some unique ground water dependent ecosystems will be lost or irretrievably degraded. Jack Creek spotted frogs are likely to be extirpated in the next ten years.

**3. The draft decision violates the Winema Forest Plan. The objections raised below were previously made in KSWild comment on December 2013 EA in reference to Alternatives 3 and 5, and with nearly identical wording in some cases and thus qualify as objections.**

- a. We object to draft decision because sensitive species conflicts with livestock grazing persist because of failure of EA/draft decision<sup>7</sup> to identify and provide adequate habitat for sensitive species, including the Oregon spotted frog.**

The Winema Forest Plan Standard and Guideline 4.7 on page 4-47 states, “*Habitat use of the Winema National Forest by these [sensitive] species shall be evaluated. Habitat requirements*

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<sup>7</sup> KS Wild notes that flaws in the EA are often mirrored by flaws in the underlying Biological Evaluation or Specialist Report. Thus, our references to the EA often constitute references to the flawed underlying BE/Specialist Report, where applicable.

*sufficient to maintain the species shall be provided.*” Similarly on page 109 of the Fremont Forest Plan, *“Habitat for sensitive plants and animals shall be managed or protected to ensure that the species do not become threatened or endangered because of Forest Service actions....maintain or increase the status of populations and habitats.”* Forests are required to review programs and activities through a biological evaluation, to determine their potential effect on sensitive species.

The decline of Jack Creek Oregon spotted frogs to less than 50 individuals clearly demonstrates that the Fremont- Winema Forest failed to maintain adequate habitat. This deficiency continues because the EA/draft decision fails to identify adequate habitat for recovery. Direct and indirect conflicts between spotted frogs and livestock are likely to occur in Riparian Management Areas along Jack Creek (Jack Creek Spotted Frog Site Management Plan). The Winema Forest Plan (4-12) states that *“the demand for livestock grazing will be met only when it does not conflict with other uses”*. Continued grazing in proposed critical habitat along Jack Creek is in conflict with restoration objectives and must not be allowed with draft decision grazing. The Jack Creek Spotted Frog Site Management Plan and Alternatives 2,3 and 5 are not consistent with the Winema Forest Plan because they do not provide for sufficient acres of quality habitat for viable numbers of spotted frogs through elimination of livestock conflicts, creation of additional habitat, and frog introductions to suitable habitats (e.g. Round Meadow marsh). The Proposed Listing for Oregon spotted frogs states that “[t]he minimum amount of habitat thought to be required to maintain an Oregon spotted frog population is about 10 ac (4 ha) (Hayes 1994, Part II pp. 5 and 7). Smaller sites generally have a small number of frogs and, as described above, are more vulnerable to extirpation. Some sites in Oregon are at or below the 10-ac (4-ha) threshold; (78FR53611).” Currently, late summer habitat on Jack Creek is estimated at less than 2 acres and much of it is poor quality due to recurring drought and livestock damage to small isolated pools. Nawa Declaration #42.

**b. The draft decision violates the Winema Forest Plan because of conflicts between beaver habitat and draft decision grazing.**

Beaver are critical for long term Oregon spotted frog viability in Jack Creek because of the open water ponds beaver create with dams. Cattle are in conflict with beaver in Riparian Management Areas because cattle eat willow, aspen and herbaceous vegetation that are the beavers main food sources and building material. Cattle also undermine beaver dams with trampling and promote undesirable conifer encroachment at the expense of broadleaved plants (Ott and Johnson 2005). Merely regulating livestock browsing on willow to 30% is inadequate when willow supply is low (Winema Forest Plan 4-63 Table 4-16). Abundant willows that develop with livestock exclusion is needed to attract and feed hungry beavers (Photo Attachment Photo 16). Alternatives 3/5 and draft decision fail to eliminate beaver/cattle conflicts in Riparian Management Areas that formerly contributed to the spotted frog decline. Winema Forest Plan (4-12) states that *“the demand for livestock grazing will be met only when it does not conflict with other uses”*. Desired restoration of beaver along Jack Creek is in conflict with draft decision grazing within existing exclosures.

**c. We object to draft decision grazing because it would cause conflicts with Miller Lake lamprey.**

The EA: 3-169 describes damage to streams from livestock grazing (i.e. conflict) (See Attach photos 7-12). The Fisheries BE p. 34 states that “[a]lternatives 3 and 5 propose grazing behind the Jack Creek riparian fence, which would increase potential impacts to Miller Lake lamprey” . Risks and grazing conflicts involving sensitive species Miller Lake lamprey will be increased with draft decision contrary to the Forest Plan. Winema Forest Plan (4-12) which states that “the demand for livestock grazing will be met only when it does not conflict with other uses”. Excluding livestock from Jack Creek Riparian Management areas would eliminate livestock conflicts as intended with the Forest Plan (Alternative 4). The Winema Forest Plan 4-137 states: [u]nder extreme conditions, the area may need permanent protection or removal of grazing for long periods (Clay and Webster 1989). Monitoring has shown that successful and relatively rapid improvement occurs when livestock are excluded from Jack Creek. Monitoring has shown that successful and relatively rapid improvement occurs when livestock are excluded from Jack Creek (Photo Attachment Photo 16).

- d. We object to draft decision grazing because it would cause adverse impacts to elk and elk calving with reintroduction of livestock grazing into North Sheep pasture with Alternatives 3 and 5.**

The EA: 3-52 states:

The project area contains summer habitat and there is a large known elk calving area within a large portion of the Chemult, North Sheep, and Tobin Cabin Pastures. This elk calving area was identified by a study conducted by Oregon Department of Fish and Wildlife between 1988 and 1993. Part of the North Sheep Pasture is within the Sugarpine Mountain Cooperative Travel Management Area which is in place to improve habitat effectiveness for big game species, to minimize vehicular harassment to wildlife, to provide a variety of recreational opportunities, including a quality hunting experience, and to achieve an open road density of 0.7 roads per square mile.

The significance of livestock impacts to elk calving are not adequately disclosed in the EA. The effectiveness of the Sugarpine Mountain Cooperative Travel Management Area in the North Sheep pasture is being undermined. Alternatives 3 and 5 increase livestock conflicts with elk on 20,000 acres in the North Sheep pasture (EA 2-127). This impact is contrary to Forest Plan and Allotment Planning guidelines to decrease wildlife conflicts with livestock grazing.

- e. We object to the draft decision because project level planning for the Antelope Grazing Allotments Project failed to adequately identify the “specific boundaries” of Management Area 8 (Riparian) as required in the Forest Plan.**

The Winema Forest Plan p. 4-136,137 states that:

Specific boundaries of [riparian] management area are identified during project level planning.

1. Riparian area management objectives shall be described for a specific zone along a stream or wetland within the proposed project area. As a minimum, the following areas shall be evaluated during the preparation of the objectives:

- a. an area within 100 feet of the normal high water line of Class I, II, or III streams (for protection of water quality and wildlife habitat);
- b. an area within 25 feet on each side of Class IV streams;
- c. any timbered area within 200 feet of wet meadows (to provide wildlife hiding cover),
- d. the entire area of a wetland, including the farthest reaches of the riparian vegetative influence, and
- e. any seeps and springs.

2. The cumulative total area of detrimental soil conditions in riparian areas shall not exceed 10 percent of the total riparian acreage within an activity area. Detrimental soil conditions include compaction, displacement, puddling, and moderately or severely burned soil.

The EA fails to comply with this direction in a number of ways. The EA:3-148 identified 8,070 acres of riparian and wetland in the Allotment which would be classified as Management Area 8. Table 3-29 identifies up to 4,643 riparian acres that would be grazed in Alternative 3. However, the EA fails to explain the discrepancy between these two estimates for Management Area 8 riparian acres. The Winema Forest Plan (4-136) states that “[s]pecific boundaries of this [Riparian] management area are identified during project level planning.” The EA Alternatives provide maps delineating livestock grazing in Riparian Areas (Management Area 8) but fails to spatially distinguish Riparian Areas from forested upland allocations on maps of the Allotment (Appendix A). Failure to systematically identify all Riparian Areas prevents effective monitoring of condition and trend for this land allocation and more importantly fails to spatially identify specific Riparian Areas that are in downward trend and not meeting Forest Plan standards.

The Botany Biological Evaluation (p.99-103) identifies about 35 riparian fens, but this only addresses about 4% of Riparian Management Area 8. The EA fails to spatially delineate Management Areas 8A and 8B that would include many thousands of acres of Riparian Management Area 8 (Table 3-29). Each riparian Management Area 8 must be identified with “specific boundaries”.

Furthermore, Jack Creek stream reaches (e.g. specific pastures) were not identified in the AMP as required to assess streambank damage as provided in S&G 23 and with procedures described in the publication: “Managing Riparian Ecosystems (Zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington”-Appendix B. The EA cannot assert compliance with 5% stream bank damage standard (Winema Plan:140), the 10 percent detrimental soil condition standard (Winema Plan:137), or “the maintain or improve”

riparian standard (FP 4-142) if the Riparian (activity) Areas are not spatially designated and monitored as distinct entities.

- f. We object to draft decision because it will not effectively incorporate required desired improved condition, upward trend and measurable enhancement objectives for Riparian Management Area 8 on 4,643- 8,070 riparian acres where most livestock grazing will occur. Monitoring and adaptive management is largely limited to monitoring high and medium value fens that comprise only 4% of Riparian Management 8 area.**

The EA violates the Forest Plan standards and guidelines for monitoring and wildlife habitat objectives because baseline inventory, monitoring and adaptive management is not being applied to the sensitive plants on some small “low” value fens or the approximately 7,700 acres of non-fen riparian areas where wildlife forage and habitat is a priority. Indeed, inventory, monitoring, and a mechanism for eliminating harmful livestock grazing appears to be limited to sensitive plants primarily found in high and medium value fens that comprise only about 4% of Riparian Management Area 8 (See Botany Report Table A-3 and Appendix G Monitoring Plan). Based on the fen inventory (Botany Report A-3) an estimated 1/3 of these un-inventoried riparian acres may be exceeding the Forest Plan 10% standard for disturbed soil but lack spatial identification or management mechanism for improved condition. Alternatives 3/5 and draft decision have mapped grazing pastures but have not mapped the boundaries of approximately 4,600- 7,700 acres of non-fen riparian management areas, conducted baseline inventories for wildlife condition, monitored trend, or developed a management mechanism for maintaining or improving trend for wildlife habitat as required in the Forest Plan. Range monitoring for livestock forage is deemed adequate at the “pasture” scale. Current monitoring lacks adequate plot data for the variability of wildlife and watershed condition and in the Chemult Pasture. The draft decision has no measurable objectives for maintaining water tables, reducing gullying, reducing conifer encroachment or maintaining desirable tree and shrub cover percents in Riparian Management Area 8 for wildlife. A single “range” monitoring site for trees and shrubs in the Chemult Pasture at Big Camp (located on Jack Creek upstream of Road 9418) is hardly adequate to meet wildlife objective requirements for tree and shrub cover identified in S&G 9-23 and wildlife habitat objectives identified in “Managing Riparian Ecosystems (Zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington.”

- g. The Forest Service violated the Forest Plan by failing to coordinate and seek assistance from U.S. Fish and Wildlife Service, and specify protection or mitigation requirements for proposed listed species.**

The Winema Forest Plan (p. 4-47) states: “If endangered, threatened, or proposed species are found in a project area, consultation requirements with the USDI Fish and Wildlife Service shall be met in accordance with the Endangered Species Act (Public Law 93-205). Before a project can be carried out, protection or mitigation requirements shall be specified (NFMA, 36 CFR 219.27[a][8]).”

The Winema Forest Plan.4-67 S&G 9-19 states: “Allotment management planning, an interdisciplinary process, shall provide for cost-effective management of range vegetation consistent with land stewardship practices. Planning shall involve grazing permittees, other range users, interested publics, and other agencies. As AMPs are written and updated, management emphasis shall be the intensification of vegetation management and forage utilization consistent with other resource objectives. The emphasis also shall be on cost-effectives administration.”

We object to the Forest Service failure to seek early assistance from the Fish and Wildlife Service about alternative development for this project and the failure to incorporate conservation actions from conferencing with the Fish and Wildlife Service into the draft decision.

A letter dated November 7, 2012 from L. Sada (USDI Fish and Wildlife Service) to G. Westlund (Fremont-Winema National Forest) states the following:

“We appreciate the opportunity to comment on the five alternatives presented in the [August 2012] EA. We have been interested in the progress of his project since its initiation in 2008. However, our last communication with you regarding this project was in 2010. It is unfortunate that our office was not involved in the development of alternatives for this project because we could have assisted the Forest up front in developing alternatives that address the conservation needs of the species noted above. Since it is unclear to us which alternative is most beneficial to the conservation of the Oregon spotted frog (frog) on Jack Creek and it appears parts of any of these five alternatives could be included in the Decision Record, we offer you the following comments. We would like to see actions that improve and retain the breeding, rearing, overwintering, and dispersal functions of occupied and potential habitat for the frog in the Jack Creek watershed. Specifically we would like to see creation and retention of open water habitats for frog breeding and rearing habitat, retention of early seral vegetation to provide full solar exposure for breeding and rearing habitat, and the protection of springs and fens associated with Jack Creek to provide adequate water quality. We encourage you to contact our office to discuss the improvement and retention of these biological features. It is our understanding that you do not intend to conference on this proposed project at this time. However we encourage you to reconsider this decision in an effort to streamline future Section 7(a)2 processes and prevent disruption of permit implementation should the frog be listed and critical habitat be designated at a later date. In the event that your position changes, please contact Tia Adams of my office to initiate discussion to determine if conferencing under the Section 7(a)(2) of the ESA is appropriate for this project regarding spotted frogs.”  
(Emphasis Added)

The EA misinforms the draft decision because the Forest Service BE has not been adequately updated with new information from the proposed spotted frog listing and the EA/draft decision lack findings and recommendations from conferencing with the Fish and Wildlife Service. The US Fish and Wildlife was not adequately involved with the development of the Jack Creek Site Management Plan and subsequent development of



grazing alternatives. Forest Service private land “term agreements” are not intended to recover species threatened with extinction. The US Fish and Wildlife Service is the logical agency for the Forest Service to have discussed private land grazing agreements and EA alternative development. Unfortunately the Fremont Winema Forest shunned technical assistance offered by the US Fish and Wildlife Service. Since the proposed spotted frog listing in August 2013, it would seem prudent for the Fremont-Winema Forest to conference with the Fish and Wildlife Service about protection and mitigation requirements in the AMP but they have only begun to conference after this draft decision was issued. Hence, we are compelled to submit this objection.

**h. The draft decision fails to identify required specific resource monitoring needed to comply with NFMA and NEPA.**

Both NFMA [36 CFR 219.12] and NEPA [40 CFR 1505.2(c)] require that the application of Forest Plan standards be monitored.

We object to draft decision because it fails to provide for: 1) adequate monitoring of sensitive species, 2) adequate monitoring and prevention of Riparian Management Area 8 degradation, 3) adequate integration with Jack Creek Site Management Plan, 4) specific course of action to reduce grazing intensity in fair and poor condition fens and 5) a schedule for improvement. Implementation and Effectiveness monitoring allows for unacceptable damage to Riparian Management Areas and loss of sensitive species contrary to the Forest Plan and Adaptive Management guidance.

**i. We object to the draft decision because it creates two standards for monitoring implementation. Range monitoring (Table G1) appears to be mandatory while corresponding “resource” monitoring for wildlife, streams, and fens is discretionary with the Forest Service resource staff.**

Appendix G-1 states that “These [resource] surveys as well as others on-going monitoring are supported to be continued by this analysis, but ultimate determinations of timing, frequency, and duration are the decision of the corresponding program areas and are not part of this decision to be made.” Appendix G-3 states that “The responsibility for completing monitoring would be the onus of Forest Service personnel.” The anticipated AMP decision by the Fremont Winema N.F. supervisor cannot absolve itself from the responsibility for monitoring fish and wildlife resources in conjunction with the AMP.

**j. The decision fails to provide site or stream reach specific desired conditions and specific monitoring techniques to make adjustments over time for willow, aspen, and desirable shrubs along Jack Creek (Riparian Management Area 8).**

Willow/aspen cover, willow/aspen reproduction, and willow/aspen restoration is not identified for monitoring along Jack Creek riparian reaches with quantitative methods relevant to wildlife needs. Quantitative woody riparian vegetation cover for wildlife and to achieve desirable stream function have not been identified in the decision. Coordination of willow/aspen monitoring with wildlife biologist is not evident, especially in areas where willow restoration is planned with Jack Creek Site

Management Plan. This means that the Forest Service has failed to define desired future conditions in violation of S&G 9-23, and that the agency will lack data on these important indicators of riparian condition. With such data gaps, the Forest Service cannot comply with direction in the Forest Plan to maintain or improve riparian characteristics and fish and wildlife habitat in riparian areas.

The EA suggests beaver (though not currently present) may exhaust existing forage supplies in a few years. This observation makes management restoration of willow a high priority. Effectiveness monitoring to provide for increased willow/aspen production along Jack Creek is needed. Anticipated grazing of willow/aspen to Forest Plan standards (30% p. 4-63) is too high when beaver needs are in conflict with livestock use (Ott and Johnson 2005). Late season livestock use into October will exacerbate shortage of willow needed by beaver and make restoration of aspen difficult. We agree with comment 588-19 by ODFW who have “observed increased aspen regeneration in the North Sheep pasture. Grazing within Jack Creek, the meadow units and North Sheep pasture could negatively impact aspen stands and regeneration. Aspen utilization should be monitored and the aspen stands protected if needed.” Furthermore, recent published research demonstrates that grazing retards aspen recovery and leads to depleted stands as is evident along Jack Creek (see Bestcha et al. 2014, attached)

The Forest Service response suggests that they are not aware of existing aspen along Jack Creek and its vulnerability to ongoing trespass grazing and draft decision grazing. The Fremont Winema Forest relied on faulty TEU inventories that failed to identify aspen potential along Jack Creek and “therefore [aspen] not considered in development of site specific desired conditions.” This is a serious oversight because aspen stands are extremely valuable to wildlife and proper stream function. Assertions in the Forest Service response that merely adhering to livestock utilization standards in the Winema Forest Plan ( Winema FP 4-52,4-63) would be adequate for aspen restoration is known to be wrong. On May 18, 2014 R. Nawa observed 100% utilization of aspen suckers in a declining grove of aspen along Jack Creek in the North Sheep Pasture (Photos 1a, 1b). This observation corroborates the concerns expressed by ODFW about overuse of aspen regeneration. The Fremont Winema Forest is aware of this aspen grove because encroaching lodgepole pine had been felled several years ago to improve vigor of remaining mature trees. Unfortunately this grove appears doomed because of 100% utilization of aspen suckers. The Forest Service’s EA should include these and other woody riparian species in its analysis and monitoring plan.

**k. Stream Riparian areas and Wet Meadow Riparian Fens (Management Areas 8A and 8C) are not being managed and monitored in the draft decision for existing and potential vegetation as required in Winema Forest Plan.**

The Winema National Forest Plan Standard and Guideline 9-23 for Allotment Management Planning (p. 4-67) states:

“Allotment management plans for range shall include a strategy for managing riparian areas for a mix of resource uses. A measurable desired future riparian condition shall be established based on existing and potential vegetative conditions. When the current riparian condition is less than that desired, objectives shall include a schedule for improvement. The allotment management plans shall identify management actions needed to meet riparian objectives within the specified time frame. Measurable objectives shall be set for key parameters, such as shaded stream surface, stream bank stability, and shrub cover. This process is described in 'Managing Riparian Ecosystems (zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington' (1979). The plan shall address the monitoring needed to determine if the desired rate of improvement is occurring. Allotment management plans currently not consistent with this direction will be developed or revised on a priority basis under a schedule established by the Forest Supervisor”

In violation of this provision of the Forest Plan, the draft decision/EA fails to identify quantitative monitoring and management for streamside vegetation to meet the needs of wildlife and standards for stream channel stability. The EA fails to adequately describe the existing riparian vegetative condition, the potential riparian vegetative condition or the desired future riparian vegetation along Jack Creek as required in S&G 9-23. For example, the existing condition of woody riparian vegetation such as willow, aspen, bog birch and spirea within proposed grazing units along Jack Creek is not adequately described or quantified (e.g. percent streamside shrub cover, reproduction assessment). Potential vegetation along Jack Creek includes aspen (Photos 1a,1b) but the draft decision/ EA fails to identify aspen as a component of desired future riparian condition along Jack Creek. This is a serious error because willow/aspen provides streambank stability and the highest quality wildlife habitat. Beaver are particularly dependent on willow/aspen for food and materials for dam construction. There is no discussion of woody plant species that may have been lost from specific riparian areas (e.g. specific Jack Creek stream reaches) or what riparian conditions would be present if the Jack Creek riparian areas had never been grazed with domestic livestock (i.e. potential vegetation). The draft decision/EA has no schedule for improvement of woody riparian vegetation along Jack Creek as required in S&G 9-23. The principal species of concern is willow, which appears to have been greatly reduced from historic abundance. Small willow plants from recent successful reproduction along Jack Creek were observed to be severely browsed by trespass cattle to 100% and some are dying due to chronic trespass grazing (Photo Attach Photos 3,4 ).

The range report does not assess riparian shrub and tree conditions along Jack Creek (response to cmts p. 8). The response to comments p. 8 states that monitoring includes many possible methods including photo monitoring, MIM assessments, Riparian Scorecards, etc. but none are specifically identified for Jack Creek and none have been used to collect and report baseline riparian shrub conditions from Jack Creek.

Riparian monitoring techniques are identified in Appendix G-2 but none are specifically required to be implemented on specific reaches of Jack Creek(response to cmts p. 8). Streamside shrubs and trees have not been assessed along Jack Creek. Only one site assessed in the Range Report, Big Camp, is along Jack Creek. Many reaches of Jack Creek

have been denuded of woody vegetation by past grazing resulting in sloughing/failing streambanks and down cutting. Furthermore, many Jack Creek stream reaches are in unsatisfactory condition due to lack of willows and would require “0” range use to establish sufficient willows on streambanks to achieve desired streambank stability and satisfactory wildlife habitat (p.4-63 Winema Forest Plan) (Photos 3, 4).

None of the monitoring in Table G2 addresses measurable objectives for woody riparian vegetation along Jack Creek. Standard level II stream surveys are not designed to assess woody riparian vegetation along Jack Creek for wildlife nor are they intended as monitoring for AMP implementation. The entire length of Jack Creek needs to be surveyed for woody riparian vegetation potential, condition for wildlife, condition for streambank stabilization, and apparent trend prior to any renewed grazing regimes.

Similarly, the EA Implementation Monitoring in Fens (Appendix G-7) errs by providing only the desired future riparian soil condition for all wet meadow riparian fens (“A desired future condition of less than 10% bare soil was established for maintaining fen habitats in the project area.”). This standard is a soil and water “desired future condition” from the Forest Plan (4-137):

“2. The cumulative total area of detrimental soil conditions in riparian areas shall not exceed 10 percent of the total riparian acreage within an activity area. Detrimental soil conditions include compaction, displacement, puddling, and moderately or severely burned soil.”

While this desired future condition for soil is useful, the more appropriate and comprehensive standard and guidelines are found in the Allotment Management Planning section of the Forest Plan 4-67. As with the woody riparian vegetation monitoring described above, the appropriate Standard and Guideline for AMP planning for (wetland) riparian condition is S&G 9-23. Allotment Management Planning Standard and Guideline 9-23 provides that both the baseline existing and desired future riparian condition for each wet meadow riparian fen be identified. The 10% desired future condition for soil is a generic "one size fits all" and we assert must be used in conjunction with S&G 9-23 for Allotment Management Planning. The 10% soil degradation standard as a stand alone desired future riparian condition creates a grazing loophole for degrading good condition riparian fens with low bare ground (<10%) and fails to provide a schedule for improvement of poor condition riparian fens.

Assuming we use the bare ground standard, Allotment Management Planning with S&G 9-23 would require the identification of both existing and desired future condition with a schedule for improvement as illustrated with the following hypothetical examples:

“Existing bare ground in 2011 at riparian fen 45 was 18% and the future riparian condition will be improved to <10% bare ground by 2018 with grazing exclusion.”

"Existing bare ground in 2011 at riparian fen 34 was 4% and the future riparian condition will be maintained at 4% or less bare ground in 2016 with deferred grazing.”

These examples conform to S&G 9-23 and eliminates “bare ground” loophole for degrading "good" fen 34 to exceed 10% bare ground and eliminates loophole to let fen 45 languish

indefinitely as poor. The examples are also consistent with “maintain or improve” Forest Plan requirements and Adaptive Management. While all Standards and Guidelines apply, the current AMP project must focus on using **Forest Plan Allotment Management Planning S&Gs** which were intended for this planning process.

The response to comments p. 8 admits that 3% of the fens have excessive erosion and 25% exceed the 10% bare ground standard. The response asserts that “agreement among resource specialists” that the bare ground S&G is good enough for unique sensitive fens while the more relevant S&G 9-23 can be ignored is an obvious violation of the Forest Plan. The draft decision arbitrarily chooses an obscure “10% damage” soil standard and guideline while ignoring standards and guidelines specifically developed for AMPs. The draft decision must comply with all standards and guidelines, especially the ones specifically written for AMPs (e.g. S&G 9-23).

- I. Stubble height standards identified in the Range Report are insufficient to restore stretches of Jack Creek, in violation of Forest Plan direction at 4-137. The Winema Forest Plan 4-137 states that, “Where stream banks or channels are highly erodible, the stubble height at the end of the grazing period shall exceed 4 inches. Under extreme conditions, the area may need permanent protection or removal of grazing for long periods (Clary and Webster 1989).” (emphasis added)**

Contrary to this direction, stubble height standards identified in the Range Report are not sufficient to restore reaches of Jack Creek that have been denuded of woody vegetation and are extremely susceptible to streambank instability and down cutting (Photo 4). Nor can stubble height standards restore open water habitat for threatened Oregon spotted frogs. Removal of livestock from Jack Creek initiated with the frog fence in 2008 and non-use in the North Sheep Pasture (ca 2006) have not yet accomplished recovery objectives consistent with the Forest Plan (e.g. adequate habitat for threatened species, wildlife habitat, streambank stability). There has been no documented improvement of Jack Creek stream conditions that would warrant resumed grazing. Chronic trespass grazing has prevented even modest recovery of Jack Creek in some areas (Photo 4). Removal of grazing for a longer period is needed in order to achieve consistency with the Forest Plan.

- m. The draft decision fails to establish riparian stubble height based on riparian forage utilization standards in Winema Forest Plan. (see Ks Wild cmt p. 19)**

The draft decision, Monitoring Plan Appendix G, and EA fail to identify a stubble height for riparian areas as required in Range Standard and Guideline 9-3: *In riparian areas, management practices shall provide for regrowth of riparian plants after use or shall leave sufficient vegetation at the time of grazing for maintenance of plant vigor and stream bank protection. See table 4-16. Allowable use is expressed as biomass, but will be monitored as stubble height by developing stubble height weight biomass conversion tables.* (emphasis added; Forest Plan 4-63.)

The response to comments p.17 states that “Range Specialist Report (p 55) identifies the relationship between percent utilization and stubble height. Based on this

relationship, allowable stubble heights are identified at 6 inches for most of the riparian areas (Jack Creek) within the project area (OR spotted frog habitat) with a few areas identified at 4 inches.” But no such stubble height standards appear in draft decision, monitoring appendix G or supporting decision documents.

**n. The draft decision will fail to maintain existing good vegetative cover and desirable soil condition in riparian areas.**

Fens are a unique type of riparian area best classified and mapped as “wet meadow” in Forest Plan. Assertions in response to comments that protective riparian S&Gs do not apply to fens are plainly wrong and not based on science.

The Winema Forest Plan 4-136 states “Existing conditions will be maintained or enhanced” and p.4-141 states “Maintain or improve meadow condition and prevent gulling or dropped wader tables.” The Monitoring Plan (p.7) provides for a 10% bare soil (detrimental soil condition) standard for fens. Managing for this standard alone violates the Winema Forest Plan because it would allow some fens that have no bare soil or minor amounts of bare soil to be damaged during the grazing season with increased amounts of bare soil. Increased bare soil increases risks to sensitive species and increases risks for gullying. The Forest Plan did not intend for fens and riparian areas with minor amounts of detrimental soil conditions to have downward trend towards the 10% bare soil condition during a single grazing season or cumulatively from several grazing seasons.

**o. The draft decision fails to monitor other detrimental soil conditions besides bare soil.**

The single “bare soil” monitoring criterion in the Monitoring Plan is not consistent with the full definition of “detrimental soil conditions” as described in the Winema Plan (p. 4-137): “Detrimental soil conditions include compaction, displacement, puddling, and moderately or severely burned soil.” According to this definition, pedestalling and post-holing would also be detrimental soil conditions. The Winema Plan:4-141 states “Maintain or improve meadow condition and prevent gulling or dropped water tables.” To comply with this direction in the Forest Plan, the monitoring measurements in fens must include monitoring of all detrimental soil conditions and not be limited to “bare soil”.

**p. Baseline (existing) vegetative and soil conditions must be maintained with quantitative data. Cattle must not be turned out into fens where saturated soils results in measurable increases in bare soil and other detrimental soil conditions.**

The Forest Plan does not allow for downward trend in riparian conditions, but the EA monitoring plan Appendix G fails to provide for description and monitoring of current detrimental soil conditions (bare soil compaction, displacement, puddling, burned soil, gullying) and hydrologic conditions (water table characteristics) in each meadow and fen that would allow the Forest Service to determine current condition and trend.

Existing detrimental soil conditions must be first established as “base line conditions” and provide that grazing will not be allowed to cause measureable increases in detrimental soil conditions or adverse deterioration of water table. This is an anti-degradation standard commonly used for maintaining high water quality in wetlands (e.g. fens, streams). A recent court ruling (Gifford Pinchot Task Force v. Perez, attached) found that baseline conditions must be established for resource conditions (e.g. groundwater dependent ecosystems) before NEPA analysis. Merely monitoring for some parameter after the decision with no baseline data is contrary to law.

Grazing cannot be allowed to degrade existing riparian conditions as this would be counter to Forest Plan requirements. Implementation Monitoring in Appendix G-8 and Botany report suggests that annual grazing creation of “bare ground” will be used to determine allowable maximum use rather than forage utilization. Bare ground 10% standard is generally exceeded from trampling before the 50% vegetation utilization standard is reached. This strongly suggests that these fens are being grazed prior to soil range readiness which results in downward trend during the grazing season. Downward trend is not allowed in the Forest Plan AMP planning for riparian areas.

- q. Monitoring frequency must detect short term changes in trend to prevent irreversible losses. Annual increases in detrimental soil conditions (e.g. bare ground) violates the Forest Plan each year.**

The Winema Forest Plan Standard and Guideline 9-23(p. 4-67) states that “[t]he [allotment management] plan shall address the monitoring needed to determine if the desired rate of improvement is occurring”. Currently the Monitoring Plan only assesses trend every 3- 5 years and would allow bare soil to increase within qualitative condition classes (good condition fens could deteriorate within the condition class or even drop to poor). A fen with <1% bare soil would be allowed to increase to 9% bare soil with the trend standard described in Monitoring Plan (p.9.) This means irreversible impacts may occur before action is taken and recovery may not be possible. The 10% degradation standard for fen “bare ground” is not scientifically credible for maintaining fens in good condition as per Forest Plan. At or near the allowed 10% detrimental soil disturbance, the fen can easily slip into fair category. Any measurable increase in “bare ground” means that the Riparian standard has been violated whether it’s from a single season or several seasons of use.

Trend is change over time. Trend can be measured over a day, a month, a grazing season or several grazing seasons. There is no reference to “long term” trend in the Forest Plan. We assert that downward trend during a single grazing season is not allowed. Measurable increase of bare ground during a single grazing season is not allowed. If annual use in fens causes annual increased bare ground, we do not see how this can be construed as a “desirable rate of improvement” since the fen is being degraded each year over the course of the grazing season.

- r. All Riparian Management 8 Areas that are grazed must be monitored.**

The monitoring plan fails to monitor all fens and has no systematic monitoring for non-fen riparian areas. This prevents the Forest Service from delineating and determining status and trend of riparian areas and habitat for sensitive species due to authorized cattle grazing, as required by the Forest Plan. The monitoring plan indicates that only the higher value (larger) fen habitats will be monitored. The Monitoring Plan will monitor higher value fens but the draft decision will graze all fens (many smaller fens have not been inventoried) and will graze non-fen riparian management areas. Arbitrarily limiting monitoring to high value fens is contrary to Forest Plan guidelines for Riparian Management Areas and Adaptive Management. Each fen or riparian management “activity area” must be delineated during project development and monitored to establish quantitative baseline conditions with regard to detrimental soil conditions and status of the water table. Each fen and non-fen riparian management area would have an existing condition and a desirable future condition with regard to bare soil. Each fen is a distinct Riparian Management Area that is identified during project level planning (Winema Plan 4-136). Each fen and non-fen riparian area is vulnerable to degradation as documented in Botany Biological Evaluation Report (Table A-3) and the EA. We assert that proposing grazing in riparian meadows means that there must be site specific monitoring of condition and trend.

**s. The Draft Decision and Implementation Monitoring fail to reduce grazing intensity on well-known overuse fen and riparian areas.**

The Forest Service Handbook (92.23b - Adaptive Management p. 10 ) states: “The key to development of adaptive management actions is to focus on factors that are essential to ensure management objectives are met.” Reduced grazing intensity is not being implemented where it is needed the most. The EA p.3-150 states “During the [2011] spring and fen surveys, eight fens were determined to be in poor condition; all but 1 of these fens were located outside of ungrazed fenced riparian areas. Eleven of the surveyed fens were within ungrazed fenced riparian areas; ten of these were determined to be in good condition. The majority of fens that were observed to be in poor condition were located in the southeast corner of the Chemult pasture near the entry/exit gate for the pasture.” (Emphasis added) Neither the Draft Decision nor the Monitoring Plan places an emphasis on this obvious area of overgrazing causing riparian damage. A credible “adaptive management” strategy would recognize this important observation about unacceptable impacts being located in an area where the cows are turned out each year, however, neither the grazing schedule or draft decision indicates specific changes to prevent continued damaging use in these fens. For example, the Annual Operating Instructions for 2013 and 2014 did not make changes as to where, when, and how many cattle are turned out to the Chemult Pasture to effectively reduce local grazing intensity on poor condition fens.

**t. The Draft Decision lacks Forest Plan requirement to coordinate monitoring of fish and wildlife that are in conflict with anticipated livestock grazing. The draft decision lacks specific monitoring for fish and wildlife known to be in conflict with livestock grazing.**

Appendix G-1 states the following:

“ On-Going Monitoring



Separate from this analysis, monitoring within the project area would continue as planned for resource areas. This includes, but is not limited to, existing monitoring schedules for Jack Creek (Level II Stream Habitat Surveys and water quality monitoring) and the Oregon spotted frog egg mass surveys on Jack Creek. These surveys as well as others on-going monitoring are supported to be continued by this analysis, but ultimate determinations of timing, frequency, and duration are the decision of the corresponding program areas and are not part of this decision to be made.”

This statement is contrary to Forest Plan Standard and Guideline 9-20 which stipulates Allotment Planning will have “Coordination requirements with other resource operations shall include: (1) threatened, endangered, and Sensitive plant and animal species; (2) riparian area conflicts; (3) livestock and wildlife conflicts;” (emphasis added)

The Draft Decision fails to coordinate anticipated grazing with wildlife needs to provide an adequate monitoring plan ,including monitoring of those attributes described above, for Oregon spotted frog, Miller lake lamprey and Jack Creek stream habitat on which these species and others depend. The Forest Service failed to conduct up to date stream surveys for Miller Lake lamprey and its prey species. The Forest Service failed to make an up to date survey of Jack Creek for spotted frogs and spotted frog habitat. For these and other reasons, the Draft Decision is based on incomplete, outdated, or erroneous fish and wildlife information. For example, the EA erroneously assumes no impact from short duration grazing (Photo Attachment Photos 3,4).

**u. Adaptive management requires “definition of appropriate decision criteria (constraints) to guide management”. Grazing management changes are not being incorporated into Annual Operating Instructions to address known unacceptable conditions of fens in the southeast portion of the Chemult Pasture.**

“Decision criteria” are not explicitly stated in the Monitoring Plan or Draft Decision as required by the Forest Service Handbook. (92.23b - Adaptive Management (p. 8 ). The Monitoring Plan provides a column header: “variability indicating action.” This does not meet the requirement for “decision criteria”.

The Forest Service Handbook (92.23b - Adaptive Management p. 10 ) states: “The key to development of adaptive management actions is to focus on factors that are essential to ensure management objectives are met.” As explained previously, data in the EA (p.150) already indicates that fens in poor condition “were located in the southeast corner of the Chemult pasture near the entry/exit gate for the pasture.” Poor condition fens should have produced an adaptive management response for the 2013 and 2014 Annual Operating Instructions but none was provided. It appears that “Adaptive Management” is being misused in this allotment to delay instead of implement needed management actions to improve riparian management areas as required in the Forest Plan.

Also, as explained previously, quantitative measurements of detrimental soil damage are needed in all fens to detect downward trend that would not meet Forest Plan standard to “maintain” Riparian Areas. The Monitoring Plan appears to allow a fen with <1% bare soil

be damaged annually by livestock grazing to 10% with no intervention. Consistent with the Forest Service Handbook, decision criteria need to be developed that do not allow any measureable decline in fen or riparian management area 8 quality (i.e. measurable downward trend).

- v. The monitoring plan lacks the required “schedule” for improving specific riparian management areas. The desired improved riparian condition is uncertain with deferred grazing or high intensity grazing. Monitoring condition every 5 years is inadequate.**

The Winema National Forest Plan Standard and Guideline 9-23 for Allotment Management Planning (p. 4-67) states that “[w]hen the current riparian condition is less than that desired, objectives shall include a schedule for improvement”. Neither the Modified Preferred Alternative nor the Monitoring Plan provides a “schedule for improvement”. The EA and the Monitoring Plan suggest that each year fens will be degraded with increased bare soil and expected to “recover” in time for next year’s grazing degradation. No timeline, i.e. schedule, is given as to when each monitored fen or riparian areas currently not meeting Forest Standards will improve to good riparian condition.

The Winema National Forest Plan Standard and Guideline 9-23 (p. 4-67) states that “[t]he [allotment management] plan shall address the monitoring needed to determine if the desired rate of improvement is occurring”. Monitoring every 5 years does not constitute a “schedule for improvement” and fails to establish a desired rate for improvement. Grazing exclusion in alternatives 4 would provide the desired rate of improvement. Neither the draft decision nor the Monitoring Plan demonstrates how or why deferred grazing or high intensity grazing “is needed” to improve riparian conditions. Grazing exclusion is the only known technique that has been proven effective for improving riparian conditions in this allotment. Grazing exclusion is certain to obtain desired results in the context of a “schedule for riparian improvement” whereas deferred grazing or high intensity grazing has no certainty for a “schedule for riparian improvement”. The EA cannot reliably predict when or even if riparian conditions will improve with deferred grazing or high intensity grazing.

- w. We object to Implementation Monitoring in Fens (Appendix G-7) because it inappropriately allows for annual downward trend in fens as measured with percent “bare soil”, in violation of the Forest Plan’s requirement to maintain or enhance riparian areas and habitats. The wording of the Desired Future Condition is a grazing loophole to provide for annual grazing damage and annual downward trend in fens and riparian management areas. The EA fails to use the appropriate Allotment Management Planning Standard and Guideline 9-23 that was specifically written for riparian area management.**

The Forest Plan provides for maintaining condition or improving the riparian condition. The intent of the Forest Plan riparian management is to prevent downward trend since the Forest Plan only provides for “maintain or improve”. The trend measurements must first establish a baseline condition which here has been defined as percent bare soil. There is no need to exceed 10 percent bare ground to demonstrate downward trend as implied in the EA. For

example, a monitoring activity area that currently has 2% bare ground and subsequent to grazing has 8% bare ground has downward trend and is in violation of Forest Plan. Appendix G states that “a desired future condition of 10% bare soil was established for maintaining fen habitats in the Project Area.” The 10% bare ground standard is not an appropriate Forest Plan grazing “objective” as is stated because it would allow degradation of fens with less than 10% bare ground. Ten percent bare soil is a significant and undesirable condition. There is no ecologic “need” in the published fen literature to increase bare ground in a fen towards the 10% degradation standard. The 10% bare ground “desire” is being used as a specious rationale to graze until the soil impacts exceed desired condition. This approach is based on degradation and has no restorative purpose. Allotment Management Planning Standard and Guideline 9-23 is the appropriate management direction that was specifically written for riparian area management when developing AMPs. Standard and Guideline 9-23 is not being implemented with AMP planning as intended.

- x. **The costs associated with draft decision, alternatives 3, and alt 5 to increase grazing distribution and increase duration of grazing are impractical (\$222,160 in year 1;EA2-28) and do not comply with Allotment Management Planning Standards and Guidelines 9-18, and 9-19.** These alternatives are clearly not cost effective to administer for either the Forest Service or the permittee. The decision fails to consider additional restoration costs with proposed grazing that are not included in economic analysis.

#### **4. Environmental Impact Statement**

NEPA directs federal agencies to prepare a detailed “environmental impact statement” (EIS) for major federal actions that may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations define “significantly” to include actions which may adversely affect public health or safety and/or unique characteristics of the geographic area such as proximity to park lands, wetlands and ecologically critical areas or whether the action threatens a Federal or State law or requirements imposed for the protection of the environment.

- a. **The “Finding of No Significant Impact” for draft decision (Alt 3/Alt 5) is an egregious error as discussed below. The rational decision is to reduce grazing distribution impacts so that an EIS is not necessary ( e.g. choose Alternative 4).**
- b. **40 CFR § 1508.27 Significantly.**  
*Significantly* as used in NEPA requires considerations of both context and intensity:  
(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term

effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

**(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.**

The likely past, ongoing and future Oregon spotted frog trampling from draft decision and likely adverse effects to proposed critical habitat are illegally discounted in the EA with scientifically invalid statements of purported grazing benefit (Attachment Photos 3,4). The Forest Service must defer to expert opinion of US Fish and Wildlife proposed listing in the 78 Federal Register 53600 that states the following:

“Livestock Grazing Conclusion—Where livestock grazing coincides with Oregon spotted frog habitat, impacts to the species include trampling of frogs and changes in habitat quality due to increased sedimentation, increased water temperatures, water management techniques, and reduced water quality. The effects of livestock grazing vary with site conditions, livestock numbers, and timing and intensity of grazing. In Washington, all of the known occupied areas have been grazed in the recent past, but where grazing has been removed, heavy infestations by invasive reed canarygrass have reduced or eliminated habitat for Oregon spotted frogs unless other management techniques were applied. In controlled circumstances, moderate grazing can be beneficial if it is the only practical method for controlling invasive, nonnative vegetation and sustaining early seral stage vegetation needed for egg laying. Grazing is ongoing in 10 of the occupied sub-basins and is considered to be a threat to Oregon spotted frogs at these locations. (emphasis added)

Grazing is clearly a threat to Oregon spotted frogs in Jack Creek and not a benefit as erroneously purported in the Jack Creek Site Management Plan, the EA and the draft decision.

**(2) The degree to which the proposed action affects public health or safety.**

Citizens hiking on public lands along Jack Creek are at risk of being trampled by aggressive cattle. A woman narrowly escaped injury from being charged by cattle during summer 2013. The incident was reported to the Forest Service and law enforcement. Biologists cannot safely monitor Jack Creek spotted frogs if their personal safety is at risk. We think it is significant that the Forest Service asserts that the public will be expected to carry firearms for personal safety when visiting Jack Creek. This is not to be construed as general safety issue for all public lands grazing, quite the contrary, it is this permittee's cattle grazing along Jack Creek where personal safety is put at risk.

Fens perforated by cattle trampling cause people visiting them to be at increased risk for being mired in fen muck. A person was engulfed in fen muck when he traversed an area where a cow had died in the fen and created instability in the peat.

**(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.**

The Jack Creek area (aka Walker Rim) has one of the greatest concentration of fens (Ground Water Dependent Ecosystems) in the region with numerous sensitive plants and animals. All sensitive plants and animals are put at some level of risk with proposed livestock grazing, none are benefitted.

Scientific studies have reaffirmed the unique nature of this area and special resources that exist on the Chemult Pasture. Dr. Michael Cummings, a hydrogeology professor from Portland State University, has been conducting research on the Antelope Allotment since 2010 to study the groundwater system that supports this unique complex of fens. Declaration of Dr. Michael Cummings (filed herewith). Dr. Cummings explains in his declaration the research he has been conducting on the allotment to examine and develop an understanding of the groundwater systems and their relation with the surface water systems and fens in this area. Cummings Decl. ¶¶ 19-35. Dr. Cummings compiled a report for the Forest Service in 2012 based on his research to that point, which described his findings about “the unique hydrogeology of the entire Walker Rim area and the ecosystems it supports.” *Id.* ¶ 33 & Ex. 2. He is continuing his research in this area to learn more about this unique hydrogeologic system. *Id.* ¶¶ 34-35, 56-58, 70 & Ex. 3. Dr. Cummings’ research shows that the hydrogeology of the area developed as a result of the eruption of Mt. Mazama 7,700 years ago, which blanketed the area with a thick layer of pumice, as well as the high elevation and gentle topography of the area, which allow for adequate snowpack and certain erosive processes to occur. *Id.* ¶¶ 38-48. These factors led to a groundwater system that contributed to peat accumulation in highly saturated areas and peat based plant communities that gradually formed “the extraordinary system of fens and wetlands we see today on the Antelope Allotment.” *Id.* ¶ 49. Dr. Cummings states that the “massive diversity of groundwater dependent meadows, fens, and wetlands that form the Walker Rim GDE [groundwater dependent ecosystems] are the result of millennia of complex hydrological geological, and biological change. The unique system that results from the specific interactions of the pumice, slope, and precipitation patterns of this area is unprecedented in this region. In my professional experience, I have never before encountered such a unique and extensive system.” *Id.* ¶ 50. His studies also show, however, that this system is not permanent and continues to evolve. *Id.* ¶¶ 55-56. Thus, if the fens are disrupted or damaged, they are lost and are unlikely to reform in the same way. *Id.* Dr. Cummings described the unique nature of the area and its fragility to the Fremont-Winema Forest Supervisor on March 5, 2014. *Id.* ¶¶ 36-37.

In addition, U.S. Forest Service botanist Dr. Rick Dewey has continued to study the fens and sensitive plants found on the Chemult Pasture to try and better understand how the fens function. Rule Decl. Ex. 14. Dr. Dewey has established plots in many of the fens to assess water table levels and study the sensitive plants and other fen species found at the sites. *Id.*;

Simpson Decl. ¶¶ 54-59 & Ex. 6 (water table study data). Dr. Dewey and other Forest Service botanists also inventoried other nearby districts in 2011 to determine if they also contained fens and sensitive plants. Rule Decl. Ex. 15. Those surveys found a few fens on four other districts, but nowhere near the extent found on the Chemult District. *Id.* at 4-5.

The report from that inventory noted the surveys on the Chemult District documented an “unexpected, remarkably rich, regionally-significant sensitive species flora distributed among the 62 botanically underexplored wetland sites visited.” *Id.* at 2. The “exceptionally numerous fens occupying the northern portion of the Chemult District are rich in sensitive species” while the other districts surveyed had far fewer fens and sensitive species. *Id.* at 2, 4-5. These other districts did not have the necessary characteristics to support the same “remarkably high incidence of fen and fen-like wetlands” that are found on the northern portion of the Chemult District. *Id.* at 5. Dr. Dewey noted the uniqueness of the fens on the Antelope Allotment and the extraordinary biotic diversity they supported at the March 5, 2014 meeting with the Fremont-Winema Forest Supervisor. *See* Simpson Decl. ¶¶ 18, 27.

**(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

Reintroducing livestock grazing into recovering riparian areas is highly controversial with both the scientific community and the public. Scientists and the public value certainty for recovery of sensitive species and protection of sensitive ecological areas (fens, riparian areas, streams). The recreation oriented public values natural appearing wetlands free of soil damage, odor, flies, and cow feces. The human relationship with the environment is enhanced when people routinely see and hear frogs along Jack Creek as was the case when the Forest Plan was adopted in 1990. The human relationship with the environment is damaged when they see dead frogs on public lands, apparently trampled to death by livestock. Seeing public wetlands and riparian vegetation severely damaged by private livestock is a serious adverse impact to their expected and desired relationship with the natural environment.

As described previously, numerous scientists value the natural integrity of the area hydrology and the unique system of wetlands and species it supports, and many have advocated for discontinuation of cattle grazing in order to preserve the area for further scientific study. For example, Dr. Rick Dewey has expressed concerns about grazing the fens on the Antelope Allotment. In his comments on the 2012 draft EA, he noted that the fen complex on the Chemult Pasture “is a one-of-a-kind biophysical resource, not only on the [Fremont-Winema], but almost certainly at the [Region 6] scale as well.” Declaration of Lauren M. Rule, Ex. 34. It is unique because of the high density of fens within the complex, the collective area over which the groundwater discharges occur, and the large number of sensitive botanical species sites within this complex. *Id.* He stated that this area “warrants special administrative status at both the Forest and Regional levels.” *Id.* Dr. Dewey further stated that, “I can only recommend, with the greatest sense of urgency, that the [Fremont-Winema] embrace the concept that livestock grazing may simply be an indefensible management activity within these [groundwater ecosystems],” and recommended permanently removing, entirely or to a

very substantive degree, livestock and grazing from within the area of these groundwater-fed ecosystems. Id.

Similarly, Dr. Michael Cummings, who has conducted considerable studies on the area's unique hydrogeology, has noted that activities such as livestock grazing which increase the rate of change in the system decrease its value for scientific study. He stated that "Once disrupted, the fen system is very unlikely to return due to the ongoing hydrogeologic evolution of the area and the time it takes to re-develop these complex wetland environments. . . . Activities that disrupt those ecosystems alter the natural integrity of the overall system, and make it less valuable for scientific research." Declaration of Dr. Michael L. Cummings ¶¶ 68, 70. Dr. Cummings concludes that "such a rare confluence of hydrological, geological, and biological factors deserves significant multidisciplinary exploration and study. The transitory nature of the system makes these studies all the more valuable—over time, the system will evolve and will never return to its current state. . . . We have a great deal more to learn about this unique place; practices that increase the rate of its change or demise fundamentally alter the unique processes occurring and also shorten the time we have to investigate." Id. ¶¶ 56, 58; see also ¶¶ 36-37, 68, 70.

Furthermore, Dr. James Litts, a wetland ecologist, has also described the uniqueness of the area and its value for scientific study. Declaration of Dr. James C. Litts ¶¶ 20, 22 (filed herewith). Dr. Litts noted the value of the area for scientific study, and concluded that the impacts from cattle to the fens and wetland ecosystems have an adverse impact on the integrity of the system and thus should not occur within the Chemult Pasture. ¶¶ 28, 52.

**(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

Continued and increased distribution of livestock grazing into fens and spotted frog habitat is highly likely to have unknown risks (e.g. spotted frogs in Jack Creek North Sheep Pasture).

**(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

Reintroduction of livestock into riparian exclosures recovering from past grazing establishes a precedent for other AMP's and for other exclosures on this allotment to be grazed with widespread use of "Adaptive Management" and untested "short duration" grazing. This warrants preparation of an EIS. We note that the permittee's comments on the EA focused almost exclusively on reducing fencing in existing exclosures. For example, Mr. Little states in his comment letter :

"Dry Meadow: Within the Dry Meadow exclosure, a natural spring exists. However, the size of the exclosure appears to extreme in size. In my opinion, the fence materials will

deteriorate to the point where the fence becomes ineffective within the time frame of this AMP. Instead of rebuilding the fence in its current location, we would like to request a new look be taken at the size of the enclosure so only the sensitive resources are excluded.”

“Rider’s Camp: Within the Rider’s Camp enclosure, the only water is ground water within natural ponds (no natural springs exist). To my knowledge, no sensitive resources have been identified within this enclosure. Like Dry Meadow, the fence will become ineffective within the time frame of this AMP. Before the fence is reconstructed, we would like to request all specialists take a look at this area to see if the fence is necessary for protection of sensitive resources. We strongly feel this fence can be removed and the area incorporated into the grazing strategy for the surrounding area.”

The permittee has become emboldened by (his) Forest Service alternatives 3 and 5 to graze the Jack Creek enclosure and graze portions of the Round Meadow (marsh) enclosure and now he asserts that many other existing livestock enclosures in the allotment be reduced in size or abandoned all together. It ought to be apparent from the crudely deceptive EA that the draft decision is based on the whim of the permittee and not based on any real coordination between wildlife and range as required in S&G 9-20.

Renewed grazing in North Sheep Pasture (likely the permittee’s suggestion) and reintroduction of grazing in most other existing enclosures (also likely the permittee’s suggestion) is a significant impact because the grazing will destroy the natural appearance, degrade soil, and degrade wildlife habitat on thousands of acres of public lands. Lands previously managed for wildlife habitat recovery will now be managed for livestock as the dominant use while wildlife habitat goals and sensitive plant abundance become secondary or non-existent. For example, the decision has no quantitative wildlife goals for aspen cover or elk calving use in the North Sheep pasture but the decision has quantitative standards for livestock forage use.

**(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.**

Chronic short duration trespass grazing when added to proposed short duration grazing is likely to create cumulative significant impacts to sensitive fens, spotted frogs, and spotted frog habitat (Attachment Photos 3,4), warranting preparation of an EIS. Cumulative impacts of past, present and foreseeable grazing, including trespass grazing, would also be significant because it has contributed to a major decline of Jack Creek spotted frogs, inhibited recovery to viable numbers, and contributed to the need for a federal listing of Oregon spotted frogs.

**(8) The degree to which the action may adversely affect districts, sites, highways,**



**structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

As described above, proposed livestock grazing in unique peat forming fens will alter baseline conditions for future scientific inquiry about hydrology, ecological processes, sensitive plant abundance, and geochemical processes. What is “natural” and what is caused by livestock will be blurred because there are inadequate numbers of protected fens with no grazing. This situation warrants preparation of an EIS to more fully examine the potential impacts.

**(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

Proposed critical spotted frog habitat will be damaged by “short duration grazing” with up to 10% destruction to bare ground. Short duration grazing will trample to death an unknown number of spotted frogs now proposed for federal listing. Authorizing grazing in Jack Creek spotted frog habitat would contribute to the need for listing and increase the likelihood of extirpation of the Jack Creek population. Extirpation of even an isolated population of wildlife is a rare event and certainly significant in the context of federal forest land management, so these impacts should be examined in an EIS.

**(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.**

The proposed action threatens violations of the National Forest Management Act, the National Environmental Policy Act, and potential the Endangered Species Act, and warrants preparation of an EIS. The draft decision grazing violates numerous Standards and Guidelines of the Winema National Forest Plan as described previously. Proposed degradation of wildlife and plant habitat in riparian areas along streams and fens currently in good condition to 10% or more bare ground due to draft decision livestock trampling would require a Plan Amendment. Exemptions from S&G 9-23 standards for wildlife cover in favor of 10% bare ground standard would require a Forest Plan amendment. Exemptions from S&G 9-23 to establish cover requirements for riparian vegetation such as willow and aspen would require a Forest Plan amendment. Draft decision grazing in critical spotted frog habitat would require a “take” permit from US Fish and Wildlife.

## **PHOTOS**



Photos 1a and 1b. Aspen growing along Jack Creek in North Sheep Pasture. Mature aspen trees are dying and falling while abundant aspen suckers ( photo at right) are being heavily browsed at 100% utilization due to chronic trespass grazing. This unique streamside stand of aspen is in jeopardy of being lost due to chronic trespass use and/or draft decision grazing. Aspen is extremely valuable for wildlife and proper stream function. The draft decision fails to identify this aspen stand and others along Jack Creek for needed grazing exclusion that would allow suckers to grow to mature trees. Photos by R. Nawa on May 17, 2014.





Photo 2. Jack Creek. Fremont Winema National Forest. Chronic trespass utilization exceeding 90% prevents these willow from developing large size needed for wildlife use and stream channel stability. Photo by R. Nawa on May 18, 2014.



Photo 3. Jack Creek. Fremont Winema National Forest. Chronic trespass utilization exceeding 95% has likely killed this willow and has eliminated willow as a functional riparian species from this stream reach. Willow needed for wildlife use and stream channel stability has been extirpated by livestock grazing. Photo by R. Nawa on May 18, 2014.





Photo 4. Jack Creek. Past grazing has eliminated deciduous woody riparian vegetation (willows, aspen, spiraea etc). Sloughing, unstable streambanks are in unsatisfactory condition. Baseline riparian wildlife habitat is in unsatisfactory condition. Appropriate livestock grazing use is “0” as identified in Winema Forest Plan 4-63. Draft Decision deferred grazing cannot restore willows and aspen. Photo by R. Nawa on May 17, 2014.



Photo 5. Jack Creek Oregon spotted frog. Chronic trespass grazing and draft decision grazing increases likelihood for frog mortality. There are no surplus Oregon spotted frogs for “take” on Jack Creek. Photo by R. Nawa on May 18, 2014.

## **New References not in EA Appendix J**

Beschta, R.L., J. Boone Kauffman, D.S. Dobkin and L. M. Ellsworth 2014 Long-term livestock grazing alters aspen age structure in the northwestern Great Basin. *Forest Ecology and Management* 329 (2014) 30–36

Managing Riparian Ecosystems (zones) for Fish and Wildlife in Eastern Oregon and Eastern Washington (1979) Prepared by Riparian Habitat Subcommittee of the Oregon/Washington Interagency Wildlife Committee. (paper copy attached)

### **Attachments below submitted as electronic files on disc<sup>8</sup>**

Beschta, R.L., J. Boone Kauffman, D.S. Dobkin and L. M. Ellsworth 2014 Long-term livestock grazing alters aspen age structure in the northwestern Great Basin. *Forest Ecology and Management* 329 (2014) 30–36

Cummings Decl. Ex 2- Cummings, M.L. 2012. Ground- and surface-water hydrogeology of the unconfined pumice aquifer, Antelope Unit, Chemult Ranger District, Fremont-Winema National Forest.

Cummings Decl. Ex 3- Cummings, M.L. Draft as of April 25, 2014. Hydrogeology of Round Meadow, Fremont-Winema National Forest Portland State University

GIFFORD PINCHOT TASK FORCE v. PEREZ. No. 03:13-cv-00810-HZ

Goodwin Declaration dated May 7, 2014.

Goodwin Declaration. Exhibit 1. Photo and written documentation of 2008-2011 trespass grazing, ineffective fencing and soil/veg damage.

Goodwin Declaration. Exhibit 2. Photo and written documentation of 2012 trespass grazing, ineffective fencing, salting violations, soil/veg damage.

Goodwin Declaration. Exhibit 3. Photo and written documentation of 2013 trespass grazing, ineffective fencing, soil/veg damage.

Klamath Siskiyou Wildlands Center Photo Attachment dated January 11, 2014. (“Photo Attachment”)

Letter dated March 6, 2013 from KS Wild and 5 others to Forest Managers requesting that open water habitat be artificially created along Jack Creek during summer 2013.

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<sup>8</sup> All declarations and exhibits attached to this objection are public documents submitted to the District of Oregon as part of ongoing litigation in the case of *Concerned Friends of the Winema, et al v. U.S. Forest Service*, Case No. 1:14-cv-737-CL (filed May 2, 2014).

Markus, A. 2014. Antelope Grazing Allotments Project Chapter 3 Wildlife Resources Fremont-Winema National Forests Feb. 12, 2014 (Wildlife Report)

Nawa Declaration. Dated April 29, 2014

Nawa Declaration. Exhibit 3. KS Wild administrative appeal of U.S. Forest Service final Environmental Assessment for the Antelope Grazing Allotments Allotment Management Plan dated February 11, 2013 (submitted by R. Nawa on behalf of KS Wild on Mar. 26, 2013)

Rule Declaration Exhibit 5. Letter and emails from Chemult Ranger District regarding trespass and fence maintenance issues discussed with permittee of Antelope Allotment (2008-2009) (AR cites 2670, 2948-52 from *Or. Natural Desert Ass'n v. Sabo*, Civ. No. 10-1212-CL (filed Oct. 4, 2010); AR cites 3071-72 from *Ctr. for Biological Diversity v. Wagner*, No. 1:08-cv-302-CL (D. Or., filed Mar. 11, 2008))

Rule Declaration Exhibit 14 Dewey, R.L. 2011. Studies of fens and fen-like ecosystems on the Antelope Allotment Chemult Ranger District, Fremont-Winema National Forest

Rule Decl. Ex 15- Anderson, M, R. Dewey, and J. Wilson. 2012. Bryophyte and Sedge Inventory of Wetlands on Chiloquin, Silver Lake and Additional Ranger Districts on Fremont-Winema National Forest

Rule Declaration. Exhibit 16. 2012 Annual Operating Instructions for Antelope Allotment, Fremont-Winema National Forest

Rule Declaration. Exhibit 17. 2013 Annual Operating Instructions for Antelope Allotment, Fremont-Winema National Forest

Rule Decl. Exhibit 18. Letter from F. Way, Forest Supervisor, Fremont-Winema National Forest, withdrawing February 11, 2013 Decision Notice and Finding of No Significant Impact for the Antelope Grazing Allotments Project Environmental Assessment (Apr. 8, 2013)

Rule Declaration. Exhibit 22. Descriptions of trespass cattle or unauthorized use on/around the Antelope Allotment from Forest Service personnel (2012)

Rule Declaration. Exhibit 23. Descriptions of trespass cattle on/around the Antelope Allotment from Forest Service personnel (2013)

Rule Declaration. Exhibit 24. Email from F. Brown, U.S. Forest Service, to J. Dhaemers, U.S. Forest Service describing Antelope Allotment fence damage (May 30, 2013)

Rule Declaration. Exhibit 25 Two Notices of Non-Compliance, Antelope Allotment, from D. Sabo, U.S. Forest Service, to Iverson Limited Management Partnership, permittee (Oct. 25, 2011)

Rule Declaration. Exhibit 26. Letter from L. Guffey, U.S. Forest Service, to Iverson Limited Management Partnership, permittee, regarding warning of unauthorized cattle grazing on/around the Antelope Allotment (Aug. 26, 2013) and Notice of Non- Compliance for excess livestock use, Antelope Allotment, from L. Guffey, U.S. Forest Service, to Iverson Limited Management Partnership, permittee (Nov. 7, 2013)

Rule Declaration. Exhibit 27. Letter from L. Guffey, U.S. Forest Service, to Iverson Limited Management partnership, permittee, regarding 2013 end of season monitoring results for Antelope Allotment (Dec. 19, 2013)

Rule Declaration. Exhibit 28. Email from A. Markus, U.S. Forest Service to M. Lawrence, J. Dhaemers, and L. Phillips, U.S. Forest Service, regarding September 2013 visit to Jack Creek and concern for Oregon spotted frog (Oct. 24, 2013), and accompanying final notes from frog site review (Sept. 20, 2013)

Rule Declaration. Exhibit 30. Email from T. Simpson, U.S. Forest Service regarding Oregon spotted frog habitat restoration projects (Oct. 22, 2007)

Rule Declaration Exhibit 31 Two emails sent to T. Simpson, U.S. Forest Service (dated Jul. 9, 2009 and Sept. 11, 2009) and Forest Service report entitled Jack Creek Oregon Spotted Frog Habitat Restoration and Improvement Project Proposals (dated 2009) regarding Oregon spotted frog habitat restoration projects (AR cites 2963-72, 3496, 3398-99 from *Or. Natural Desert Ass'n v. Sabo*, Civ. No. 10-1212-CL (filed Oct. 4, 2010))

Rule Declaration Exhibit 32 Email from T. Simpson, U.S. Forest Service to J. O'Reilly, U.S. Fish & Wildlife Service, regarding Jack Creek Oregon spotted frog habitat restoration projects (Mar. 1, 2010)

Rule Declaration Exhibit 33 Email from W. Goodman, U.S. Forest Service regarding visit to Jack Creek for discussion about Oregon spotted frog habitat restoration (May 1, 2013); email exchange between W. Goodman, J. Dhaemers, and T. Smith, U.S. Forest Service, regarding Jack Creek Oregon spotted frog headcut repair work (May 9-10, 2013); email from W. Goodman, U.S. Forest Service, transmitting Jack Creek Frog Pond report by G. Orton, U.S. Forest Service (Sept. 16, 2013)

Rule Declaration. Exhibit 34. Rick Dewey, U.S. Forest Service, comments on August 2012 Antelope Grazing Allotments Project draft Environmental Assessment (Nov. 1, 2012)  
Simpson Declaration. May 6, 2014

Simpson Declaration Exhibit 3b. T. Simpson comments in response to U.S. Forest Service draft Environmental Assessment for the Antelope Grazing Allotments Allotment Management Plan (submitted by T. Simpson October 31, 2012), and administrative appeal of U.S. Forest Service final Environmental Assessment of February 11, 2013 (submitted Apr. 1, 2013)

Simpson Declaration. Exhibit 5. T. Simpson photos of fen habitats on/adjacent to the Antelope C&H Allotment (2004-2014)

Simpson Declaration. Exhibit 6 Data set from Dr. Rick Dewey's fen well monitoring study (2010-2013) (obtained by T. Simpson from R. Dewey as participant in well monitoring study)

Simpson Declaration. Exhibit 7. T. Simpson photos of frog habitats on/adjacent to the Antelope C&H Allotment (2005-2014)

Simpson Declaration. Exhibit 9 Sarah Malaby, *Biological Evaluation and Specialist Report for Botanical Species, Terrestrial Mollusks, and Three Terrestrial Insects, Antelope Grazing Allotments Project, Fremont-Winema National Forest*, Forest Service, U.S. Dep't of Agriculture (Jul. 30, 2013)

Simpson Declaration. Exhibit 10. Vince Pacific, *Hydrology Specialist Report, Antelope Grazing Allotments Project, Fremont-Winema National Forest*, Forest Service, U.S. Dep't of Agriculture (Jul. 5, 2013)

Simpson Declaration. Exhibit 11 Cindy Foster, *Soil Resource Report for the Antelope Grazing Allotments Project*, Forest Service, U.S. Dep't of Agriculture (May 25, 2012)

Simpson Declaration. Exhibit 17. Jessica M. Dhaemers, *Antelope Grazing Allotments Project Non-forested Vegetation & Range Resources Specialist Report, Fremont-Winema National Forest*, Forest Service, U.S. Dep't of Agriculture (Aug. 14, 2012, updated June 21, 2013)

Simpson Declaration. Exhibit 18. Email from L. Philips, Fremont-Winema National Forest, U.S. Forest Service, to recipients listed in exhibit, on date listed in exhibit, regarding fence conditions

Simpson Declaration. Exhibit 19. T. Simpson photos of fence conditions on/adjacent to the Antelope C&H Allotment (2011-2013)

Simpson Declaration. Exhibit 20. Emails from T. Simpson to recipients listed in exhibit, on date shown in exhibit, reporting observations of trespass cattle and new frog sightings (2013)

Simpson Declaration. Exhibit 21. Google map and narrative on chronic fence breaches submitted to U.S. Forest Service in hard copy on or around October 5, 2012 (created by T. Simpson)

Simpson Declaration Exhibit 23 Email from T. Simpson to recipients listed in exhibit, on date listed in exhibit, regarding protection measures for Oregon spotted frog

Simpson Declaration. Exhibit 24 Amy Markus, *Wildlife Resources Report, Antelope Grazing Allotments Project, Fremont-Winema National Forest*, Forest Service, U.S. Dep't of Agriculture (Nov. 4, 2013) (Note that this Nov. 2013 report has been updated replaced with attached Wildlife Report dated Feb. 2014)



Sincerely,

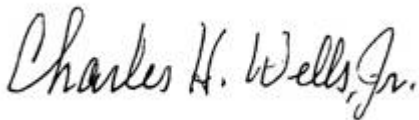
A handwritten signature in blue ink that reads "Richard K. Nawa".

Richard Nawa  
Staff Ecologist  
Klamath Siskiyou Wildlands Center-Selma Office  
PO Box 654  
Selma, OR 97526  
541-218-7973

A handwritten signature in black ink that reads "Doug Heiken".

Doug Heiken  
Western Field Representative  
Oregon Wild  
PO Box 11648  
Eugene OR 97440

Noah Greenwald, M.S.  
Endangered Species Director  
Center for Biological Diversity  
PO Box 11374  
Portland, OR 97211

A handwritten signature in black ink that reads "Charles H. Wells, Jr.".

Charles H. Wells, Jr., President  
Concerned Friends of the Winema  
820 N. Eldorado  
Klamath Falls, OR 97601  
541-205-6313  
candseldorado@charter.net